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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

FEB 22 2012

DATE:

OFFICE: CHICAGO, IL

FILE:



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The record reflects that the applicant is a native and citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen and is also the daughter of a U.S. citizen. While the applicant contests this inadmissibility, she seeks, in the alternative, a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that, as the applicant was discovered to be in possession of a fraudulent Form I-94 Departure Record at the time of her adjustment of status interview, she had willfully misrepresented a material fact to procure admission to the United States and, therefore, needed to obtain a waiver of this inadmissibility to qualify for permanent residence. He noted, in addition, the record failed to establish that barring the applicant's admission would result in extreme hardship for a qualifying relative. Therefore, he denied the waiver application. *Decision of the Field Office Director*, dated August 24, 2009.

On appeal, counsel contends that the applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, due to lack of intent to deceive, as well as to lack of knowledge of falsity. Counsel alternatively asserts that the applicant has established that her inadmissibility would result in extreme hardship for her spouse and mother. *Appeal Brief*, dated September 22, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse and the applicant's mother; psychological evaluations of the applicant's spouse and mother; letters of support; tax returns and earnings statements for the applicant and his spouse; birth, death, marriage, and divorce records; copies of the applicant's passport; and original I-94 Departure Records. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The field office director found that the applicant had sought to procure an immigration benefit by presenting a fraudulent Form I-94 card with a refugee admission stamp at her adjustment of status interview on October 7, 2005. He also found that this I-94 card established her 1991 U.S. admission was based on fraudulent documents. While noting that the I-94 card bearing the applicant's name and reflecting her April 11, 1991 admission contained another applicant's A-number, he did not point out what fraudulent documents the applicant used to be admitted. The field office director

observed that the applicant also presented at her adjustment interview another I-94 card, this one valid, bearing her name and showing she had been admitted to the United States in B-2 status (i.e., as a visitor for pleasure), also on April 11, 1991. The AAO notes that, on her Form I-485, Application to Register Permanent Residence of Adjust Status, the applicant indicates being admitted in this "visitor" status.

Counsel contends that the applicant is not inadmissible for possessing a false I-94 card, and says she entered lawfully as a tourist to attend her father's funeral. The record shows that the applicant used the valid B-2 visa in her passport to enter the United States, as evidenced by the I-94 card admitting her until October 10, 1991; it establishes she was admitted using her Polish passport bearing a single entry, B-2 visa issued at the U.S. Consulate in Poznan, Poland on October 22, 1990. Government records confirm the applicant's lawful B-2 entry and that she did not procure admission to the United States by providing fraudulent refugee documentation.

Turning to the applicant's alleged misrepresentation 14 years later in connection with her adjustment of status interview, we note the record reflects that the applicant presented an I-94 card not belonging to her during a 2005 adjustment of status interview; however, it also shows that she presented a valid I-94 establishing her lawful admission as a visitor on April 11, 1991 and at no time claimed to have been admitted to the United States as a refugee. Having been admitted in B-2 status, the applicant was eligible for adjustment of status to that of permanent resident. The record indicates that the applicant did not present the fraudulent I-94 card to an immigration officer to procure adjustment of status, but that it was merely in her possession and she showed it to the interviewing officer along with her valid I-94 card.

The applicant states that she never used the Form I-94 for any purpose, but that along with the fraudulent Form I-94 she obtained a fraudulent social security card from an unknown office in Milwaukee, which she used to work and obtain a driver's license. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). There is no indication on the record that the applicant made any misrepresentation to a government official to obtain the I-94 and social security cards.

The applicant states that she used the fraudulent social security card obtained with the Form I-94 to get a driver's license and to work. The legacy Immigration and Naturalization Service (INS) General Counsel's Office addressed in an April 30, 1991 published legal opinion the issue of whether an applicant who presents counterfeit documents in completing an Employment Eligibility Verification Form (Form I-9) is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides that because an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits, and because false statements on

Form I-9 are not for the purpose of obtaining a benefit under the INA, they “cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.”

Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9), No. 91-39, 2 (April 30, 1991). Similarly, the Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted that working in the United States is not a benefit provided under the Act. 22 I&N Dec. 560, 571 (BIA 1999) (citations omitted). Likewise, a driver’s license issued by a state government would not constitute a benefit provided under the Act.

Absent any evidence the applicant sought an immigration benefit by using the fraudulent I-94 card or social security card, we find that neither its presence in the passport that she presented during her adjustment of status interview nor the use of these documents to obtain a driver’s license and employment constitutes fraud or misrepresentation under the statute.

The record does not demonstrate that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Accordingly, she is not required to file the Form I-601 and the appeal will be dismissed as the waiver application in this matter is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The director shall reopen the denial of the Form I-485 application and continue to process the application for adjustment of status.