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



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 21 2012**

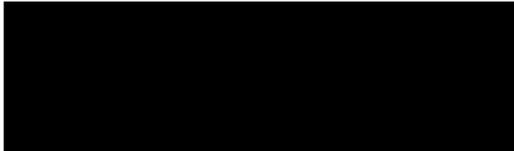
Office: PHILADELPHIA, PA

FILE: 

IN RE: Applicant: 

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, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The applicant is a native and citizen of Poland, who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for using a stolen German passport in order to enter the United States under the Visa Waiver Program. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

In a decision dated August 4, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 4, 2009.

In the applicant's appeal brief, the applicant's attorney asserts that the qualifying spouse will encounter medical, financial and emotional hardships if the applicant is unable to remain in the United States. The applicant's attorney also contends that the qualifying spouse would face medical and financial hardships upon relocation to Poland.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), a brief submitted by counsel on appeal, an affidavit and letter from the qualifying spouse, medical records for the qualifying spouse, proof of his insurance, letters from the applicant, letters from friends, a marriage certificate, the applicant's diploma for a computer program, documentation regarding the applicant's good character, and documentation submitted with the Application to Register Permanent Residence or Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

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

- (i) 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.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme

hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The AAO has determined that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, because she did not make a willful misrepresentation of a material fact in order to obtain an immigration benefit. The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161(BIA 1956).

In the present case, the record reflects that the applicant was not aware that she used a stolen German passport in order to enter the United States on June 6, 1992, under the Visa Waiver Program. In the appeal brief, counsel stated that the applicant did not know the German passport she used to obtain a visa, given to her by a relative, was not valid. Counsel asserts that the applicant was born of both Polish and German descent and in a territory that belonged to Germany prior to World War II. The record contains two statements from the applicant explaining the same, as well as providing further detail regarding her background. The applicant indicates that she was born into a mixed Silesian-German family and in a territory that belonged to Germany before World War II. She further explains that her uncle suggested she apply for German citizenship, assisted her with the paperwork and advised her only to sign documents regarding her Silesian-German heritage. The AAO will take historical notice that ethnic Germans constitute a large part of Poland's region of Opole Silesia, and that many of them obtained their German citizenship again in the 1990s.

The AAO is unable to find that the applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988). The evidence in the record fails to clearly indicate that the applicant's use of a stolen passport was willful. In light of the applicant's explanation and the background information regarding her family history and on the basis of the record as it currently stands, we cannot determine that the applicant was aware that the passport she used was stolen or that she willfully misrepresented material facts to receive a benefit for which she would not otherwise have been eligible.

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed because the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and an application for a waiver of inadmissibility is therefore not required.

In the present case, the record fails to establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible and the director's finding

regarding a misrepresentation under section 212(a)(6)(C) of the Act is withdrawn. The applicant's waiver application is thus moot and the appeal will be dismissed.

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