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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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H5

DATE: **MAY 09 2012**

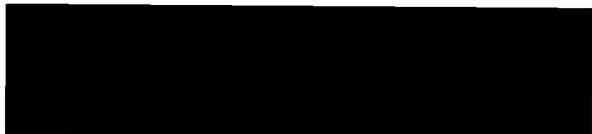
Office: LOS ANGELES

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)

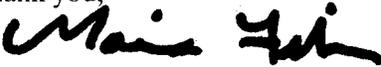
ON BEHALF OF APPLICANT:



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,

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed, the prior decision of the field office is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

The applicant is a native and citizen of the Philippines 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the field office director determined that the applicant willfully misrepresented a material fact with respect to an H-1B petition submitted by Professional Business System (PBS) on her behalf in 2004. The applicant is applying for 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 U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 9, 2009.

On appeal, counsel asserts that the finding by the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is in error. *Brief in Support of Appeal*, dated January 7, 2010. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 that:

- (1) 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.

On appeal, counsel contends that although the applicant did submit documentation in support of the H-1B petition to [REDACTED] including her resume, diplomas, credential evaluation, transcripts and copies of her passport, visa and I-94 card, the applicant did not play any role in the H-1B process itself. Counsel further maintains that the applicant's submitted documents and credentials were true and genuine and no part of the documents were falsified or fraudulently acquired. Finally, counsel notes that all Form I-129 Petitions for H-1B Classification are submitted and signed by the Petitioner/Employer and not by the Alien/ Beneficiary and thus, any misrepresentations or fraud with respect to the H-1B petition submitted by [REDACTED] on behalf of the applicant should not render the applicant inadmissible. *Supra* at 5-12.

In support, documentation has been provided by counsel establishing that the applicant did meet the qualifications of the H-1B submitted on her behalf by [REDACTED] namely, a Bachelor's Degree in Psychology or its equivalent. In addition, an affidavit has been provided by the applicant. As noted by the applicant,

I did not commit any fraud or have misrepresented a fact before any individual or government official.... In January 2004...I met the President of my potential employer, [REDACTED] when I accompanied my friend for his tax filing and business consultancy.... After several exchanges of introductions...he later offered me to work for his company.... He then discussed his vacancy/opening for a specific position.... As a result of such credible offer of employment, I was instructed to just forward my documents and school credentials to him and to the company's legal representative. ... I was able to gather my papers and forwarded via facsimile all my documents and credentials consisting of my resume, passport page, visa page, I-94 Card, college diplomas and transcript of records to his legal representative.... Sometime in February 2004, I was informed by the law firm's representative that the appropriate I-129 forms for the H-1B was already been filed.... I never had any hand on the preparation of the said H-1B petition and has no knowledge of the information and entries in all the immigration forms.... I never signed anything nor made entries therein, and had no knowledge of the other business information contained (sic) therein.... That I was and continue to be in good faith, believing that there was a bona fide offer of employment, for there was a legitimate employer and an existing vacancy since I personally met the President of the company, had seen the business premises, had seen the proofs of business evidence.... That when the petition was eventually denied and became final, I lost contact with the petitioner and never went to see him again.... I was more than qualified and eligible for the job offer, my documents were all true and authentic, and my only participation was to submit by documents and credentials as required in any hiring process and immigration sponsorship....

*Declaration of* [REDACTED] dated January 6, 2010.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In the case at hand, the record fails to establish that the applicant, by fraud or willful misrepresentation, attempted to procure H1-B nonimmigrant status in the United States. The record establishes that the AAO, in its decision to dismiss the appeal of the H-1B petition filed by [REDACTED] on behalf of the applicant, determined that [REDACTED] had failed to establish the proffered position as a specialty occupation. *Decision of the AAO*, dated November 2, 2006. At no time did the Director, California Service Center and/or the AAO determine that the applicant had, by fraud or willful misrepresentation, attempted to procure H-1B status. As noted above, the applicant clearly met the educational requirements of the H-1B submission as she held the requisite diploma and degree equivalency and said credentials were never found to be fraudulent.

Based on the record, it has not been established that the applicant made a willful or fraudulent misrepresentation to procure H-1B status in the United States. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the Form I-601 is not necessary. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether her U.S. citizen spouse has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

**ORDER:** The appeal is dismissed, the prior decision of the field office is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible. The field office director shall continue processing the Form I-485 application accordingly.