

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**



[REDACTED]

#5

Date: OCT 11 2012

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action.

The record reflects that the applicant is a native and citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that there was no evidence in the record to support a finding that the applicant's spouse would experience extreme hardship and denied the application accordingly. *Decision of the Field Office Director*, dated June 9, 2009.

On appeal, counsel contends the applicant is not inadmissible because she did not willfully, knowingly, intentionally, or deliberately misrepresent a material fact in order to procure an immigration benefit.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her [REDACTED] [REDACTED] indicating they were married on February 9, 2008; a letter from the applicant; copies of the applicant's divorce decrees; copies of pay stubs and bank account statements; copies of photographs of the applicant and her husband; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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.

In this case, the field office director found that the applicant's [REDACTED] applied for an L-2 visa on the applicant's behalf on April 19, 1998. The field office director further found that at the time the visa was granted on July 8, 1999, the applicant and [REDACTED] had already divorced, yet the applicant failed to disclose this material fact to the consular officer. The field office director stated that the applicant had "prior knowledge of [her] divorce before appearing at the American Embassy" and concluded that the applicant misrepresented her true marriage status. The field office director further stated that the application's mistake is not an excuse for inadmissibility.

The record contains a letter from the applicant which states that she never had any intention of defrauding the U.S. government. According to the applicant, she and her ex-husband owned a business together and applied for an L-1/L-2 visa during their marriage. She states that it took a long time until the visa was approved and by the time of the approval, they had already divorced, but were still

operating their business together. The applicant states that they continued to own the business together for approximately nine years after their divorce. She contends that she thought her visa was issued based on their business and not on their marriage.

After a careful review of the record, the AAO remands the matter to the field office director as there is insufficient documentation in the record to substantiate the applicant's inadmissibility. The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. The FAM states, in pertinent part: (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Fraud is defined as when an applicant makes "a false representation of a material fact with knowledge of its falsity and with the intent to deceive" *DOS Foreign Affairs Manual*, § 40.63 N3. In addition, 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 excludability 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).

In this case, there is no evidence in the record showing when the applicant purportedly appeared at the American embassy. The record does not indicate that she appeared before a consular officer either before or after her divorce from [REDACTED] and there is no evidence indicating she was ever asked about her marital status. As stated in the FAM, the applicant's silence or failure to volunteer information regarding her then-recent divorce does not in itself constitute a misrepresentation. Rather, as the applicant reasonably explains, her L-2 visa was based upon a business that she and her ex-husband continued to own for several years after their divorce. Therefore, there is no evidence in the record that the applicant made a willful or intentional misrepresentation regarding her marital status to a U.S. government official. As such, the AAO finds that there is insufficient evidence in the record to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The AAO remands the matter to the field office director to re-evaluate whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The field office director shall issue a new decision addressing the specific facts which would support a finding that the applicant willfully and intentionally misrepresented her marital status to a U.S. government official. The new decision, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.