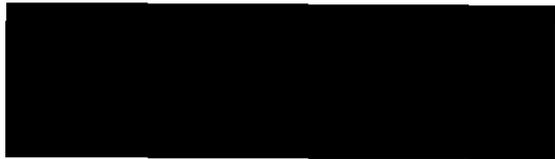


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



115

Date: **OCT 22 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:



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 that reads "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 The field office director's decision will be withdrawn and the appeal dismissed as the waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is a self-petitioning battered spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 16, 2010.

On appeal, counsel contends the applicant is not inadmissible because she did not make a willful misrepresentation to an immigration official. Counsel contends the applicant's abusive husband involuntarily took her out of the United States and was solely responsible for the manner in which she reentered the United States. In addition, counsel contends the field office director erroneously failed to consider hardship to the applicant herself. Counsel contends the applicant established extreme hardship and submits additional evidence of hardship, including evidence of her daughter's medical conditions and of her father's drug addiction.

The record contains, *inter alia*: copies of the birth certificates of the applicant's two U.S. citizen children; declarations from the applicant; a copy of a restraining order; a copy of a child custody and visitation order; copies of the applicant's medical records; copies of the applicant's daughter's medical records; copies of tax returns and other financial documents; letters of support; and an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). 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 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.

Section 212(i) provides:

- (1) The Attorney General [now Secretary of Homeland Security] 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 immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, 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 U.S. Department of State's Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. With respect to whether a misrepresentation was willfully made, 9 FAM 40.63 N5.1-5.2, states:

N5.1. "Willfully Defined"

The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. 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 made an untrue statement.

N5.2 Misrepresentation is Alien's Responsibility

An alien who acts on the advice of another is considered to be exercising the faculty of conscious and deliberate will in accepting or rejecting such advice. It is no defense for an alien to say that the misrepresentation was made because someone else advised the action unless it is found that the alien lacked the capacity to exercise judgment.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive.

In this case, the applicant contends that her abusive husband drove her to Tijuana, Mexico, when she fell asleep in the car. She states that her husband told her he was taking her to Mexico to keep her away from her family. She states she was screaming and that he forced her into the trunk of the car where she was kept for almost half an hour and felt like she was suffocating. According to the applicant, once in Mexico, he locked her in a room inside a small shack so that she could not leave. She states she was stranded in Tijuana for weeks and that approximately two months later, her husband obtained a California identification card for her to return to the United States. According to the applicant, her husband put his California identification card on top of hers and instructed her to follow him through immigration. She contends that when the immigration official took the identification cards, he asked her husband some questions. The applicant states that she does not speak English and does not know what was asked or what her husband said in response. She states they were permitted to enter the United States. The applicant states that she did not make any willful

misrepresentation to an immigration official, her husband made all of the arrangements to reenter the United States, and she had no choice but to do as he instructed her to do or else he would hurt her. The applicant states that the abuse continued for five years and that she finally gathered enough courage to get a restraining order against him and that given the history of domestic violence, he does not have any visitation rights to see their two daughters. The applicant's statements are detailed and consistent and therefore considered credible evidence.

After a careful review of the record, the AAO finds that the applicant is not inadmissible as her misrepresentation was not willful. The record shows that the applicant has established that she is a battered spouse. The record contains a plethora of evidence addressing the abuse the applicant endured from her husband, including a Restraining Order, a Child Custody and Visitation Order suspending visitation with the couple's children, a letter from a domestic violence counselor, and letters from individuals who witnessed the abuse. The AAO finds that this evidence corroborates the applicant's contention that she was abused and was coerced into reentering the United States using false documentation. Therefore, the applicant did not willfully misrepresent a material fact in order to obtain an immigration benefit. Under these unique circumstances, the AAO finds that the applicant did not willfully misrepresent a material fact for immigration purposes and is not inadmissible under section 212(a)(6)(C) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore unnecessary.¹

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.

¹ The AAO notes that the applicant is also not inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure as there was a substantial connection between the abuse and the alien's involuntary departure and subsequent unlawful reentry into the United States. See section 212(a)(6)(A)(ii) of the Act and section 212(a)(9)(B)(iii)(IV) of the Act.