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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**



H5

[REDACTED]
Date: **SEP 18 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[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,

for Maria Feli

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is not necessary as the applicant is not inadmissible.

The applicant is a native and citizen of India 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 procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 and children.

The 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 Director*, dated September 23, 2010.

In support of the appeal, counsel provides a brief and a Report of Signature Verification. 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 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 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...

The director's finding of inadmissibility under section 212(a)(6)(C) of the Act is based on the finding that the applicant applied for permanent resident status in 1993 based upon a marriage to a U.S. citizen, [REDACTED] when in fact, such a marriage never occurred. With respect to said finding, the applicant asserts that she never married [REDACTED] and moreover, was never aware that a permanent residency application had been filed on her behalf based on said marriage. As stated by the applicant:

In May 25, 1981, I married my current husband in [REDACTED]. I first came to the U.S. in 1990. We have three children together. My husband and three children are U.S. citizens.

In 1992, one of the customers at my brother-in-law's store, [REDACTED] told me that he could get me work authorization. He said he would charge me \$100, which I thought was for the filing fee....

He had me sign some forms that were in English, which I did not understand, and I believe I gave him a couple of pictures, my birth certificate and a copy of my passport. I thought that these documents were necessary for work authorization. He did not tell me anything else....

I never heard anything back from immigration about my work authorization. I assumed the man had not filed anything and he stopped coming to the store so I could not ask him....

In October 1997, I filed for adjustment of status through my husband [REDACTED].

I had my interview on my I-485 based on my husband in 1998. At that time, the officer asked if I had ever been married to a man by the name of [REDACTED]. I told the officer I had been married only once. Then the officer told me that there was an application in the file based on my alleged marriage to a man named [REDACTED]. I was shocked. The officer also showed me a photograph of me that was in the file. I said that the photo was of me. I think I may have given it to the man who had me sign the papers back in 1992....

When I retained my current lawyers...they requested a copy of my file through FOIA, and when they received it, they had me review the I-485 that was filed in 1993 on my behalf. I had never reviewed the I-485 filed in 1993 before this. They asked me if it had my signature. I reviewed the signature on the I-485. It is not my signature on that I-485....

[REDACTED] dated October 20, 2010.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). With respect to the applicant's assertion that she did not attempt to procure permanent resident status by fraud or willful misrepresentation, a Report of Signature Verification has been provided by [REDACTED] Forensic Document Examiner. [REDACTED] reviewed the Form I-485 and Form G-325A containing the questioned signature and

concluded that based on a comparison with the applicant's genuine signatures on her passport and other documentation, the questioned signatures were not written by the applicant. In addition, the applicant's spouse, who has been married to the applicant since 1981, fully corroborates and supports his wife's statements in his own notarized affidavit, dated June 9, 2010. Finally, a No Record Certification has been provided by the State of New York Department of Health confirming that no records have been found establishing a marriage record between the applicant and [REDACTED]. As such, based on the applicant's detailed affidavit, the corroboration from the applicant's spouse, a witness and active participant to the events in question and the report from a forensic document examiner, it has been established, by a *preponderance of the evidence*, that the applicant did not willfully attempt to obtain an immigration benefit by fraud and/or misrepresentation.

Based on the record, it has not been established that the applicant made a willful or fraudulent misrepresentation to procure admission to the United States. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and the Form I-601 is not necessary. Accordingly, the appeal will be dismissed as the waiver application is not necessary as the applicant is not inadmissible.

ORDER: The appeal will be dismissed as the waiver application is not necessary as the applicant is not inadmissible.