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

(b)(6)

DATE: APR 04 2013 Office: LOS ANGELES, CA 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and a subsequent appeal was sustained by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed as unnecessary, because the underlying application was approved on appeal.

The applicant is a native of Iran who misrepresented his purpose for entering the United States. Specifically, on October 18, 1998, the applicant stated that he was entering the United States to go shopping when, in fact, he was returning to his established residence and employment in the United States, activities for which the applicant was not authorized.[1] The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded the applicant failed to establish that his qualifying relative would experience extreme hardship given his inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *See Field Office Director Decision,* November 5, 2009.

The AAO sustained a subsequent appeal, finding that although the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, he met the requirements for a waiver of inadmissibility under section 212(i) of the Act. *See AAO Decision,* May 3, 2012.

On motion, current counsel for the applicant contends the applicant's former counsel, who filed the I-601 waiver and the subsequent appeal, was ineffective because former counsel failed to contest inadmissibility.

Regardless of whether former counsel should have contested inadmissibility or provided ineffective assistance, the AAO notes that, contrary to present counsel's assertions that the appeal was dismissed, the applicant's appeal was in fact sustained and the underlying application was approved. In the appellate decision, the AAO found that the applicant's spouse would experience extreme hardship upon separation from the applicant and in the event of relocation to Canada. *See AAO Decision,* p. 5-6. The AAO further held that the applicant demonstrated he merited a favorable exercise of discretion. *Id.* at 7. Although the decision incorrectly stated in the last paragraph that the applicant had not met his burden of proof, the remainder of the decision clearly reflects that the applicant did in fact meet his burden, and qualifies for a waiver under section 212(i) of the Act. It is unfortunate that the inadvertent inclusion of the word "not" has caused confusion. As noted in the first paragraph and the Order at the end of the decision, the appeal was sustained, the underlying application was approved, and the applicant was eligible for the benefit he sought on appeal.

---

[1] The AAO notes that in its decision dated May 3, 2012 it incorrectly referred to the applicant's entry with fraudulent Canadian documents. The error is harmless, however, as the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his purpose for entering the United States.

As the applicant received the benefit he sought on appeal, this motion by present counsel is unnecessary. The motion is dismissed as unnecessary, because the underlying application was approved by the AAO on appeal.

ORDER: The motion is dismissed as unnecessary, because the underlying application was approved on appeal.