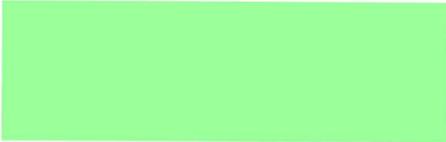


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

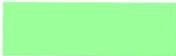


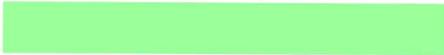
U.S. Citizenship
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Services



DATE: FEB 25 2013

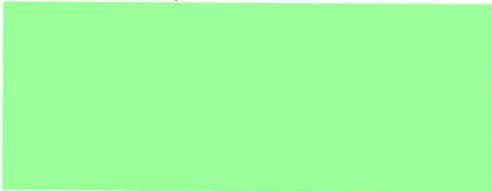
Office: CALIFORNIA SERVICE CENTER

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,


for

Ron Rosenberg
Acting 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 applicant is not inadmissible and the underlying waiver application is unnecessary.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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. The applicant is the spouse of a U.S. citizen and applied for Adjustment of Status after entering the United States as a K-1 fiancée. She contests the inadmissibility finding, but alternatively seeks 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 husband.

The director concluded that the applicant 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*, January 7, 2012.

On appeal, counsel for the applicant asserts that the director erred as a matter of law, in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, and as a matter of fact, in not finding extreme hardship to a qualifying relative. Counsel contends that the record fails to contain evidence that the applicant's use of fraudulent documents meets the requirements of this section.

The record contains a brief from counsel and new documentary evidence. The entire record was reviewed and considered in rendering this decision.

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

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.

The director noted, "[t]he record indicates that on or about October 20, 2006, the applicant admitted that, during her unauthorized employment ..., she used a name other than her own and had obtained a counterfeit I-551 [permanent resident card or green card] and social security card," as the basis for finding fraud or willful misrepresentation in violation of section 212(a)(6)(C)(i) of the Act. *Notice of Decision on Application to Register Permanent Residence or Adjust Status*, January 7, 2012.

The applicant did not use the fraudulent green card and social security card to attempt to enter the United States, and there is no indication that she misrepresented her identity or immigration status to any U.S. government official. Rather, the record reflects only that she admitted the cards were fake and had used them for employment purposes. 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 or immigration benefit must be made to an authorized official of the United States Government in order for inadmissibility 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). The record does not establish that the applicant presented a fraudulent document to a U.S. government official in order to procure admission to the United States or any other immigration benefit, or that she otherwise engaged in misrepresentation to a U.S. government official. The principle is reinforced in a 1991 opinion from the Office of General Counsel of the legacy INS:

For two reasons, we conclude that an alien's false statements on [Employment Eligibility Verification] Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) [currently, section 212(a)(6)(C)(i)] of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any particular individual involves a private employment contract. Thus, false statements on Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9), Genco Op., Paul W. Virtue, No. 91-39, 2 (April 30, 1991).

Based on the record, the AAO finds that the applicant, in possessing a fraudulent permanent resident card and using it to obtain employment, did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. She is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application is therefore unnecessary.

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 obtain a waiver. Accordingly, the appeal will be dismissed as the underlying waiver application is unnecessary.

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