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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

Date: **JAN 07 2013** Office: CHICAGO

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:

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,

*[Handwritten signature]*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the previous decision of the district director will be withdrawn and the application declared unnecessary. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen Poland, 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 having procured a visa and admission to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The District Director found that the applicant had not demonstrated that the denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(i) of the Act, and denied the application accordingly. *Decision of the District Director*, dated August 1, 2008.

The AAO, reviewing the applicant's Form I-601 on appeal, found that the applicant failed to establish the applicant's qualifying relative would suffer extreme hardship. The AAO thus concurred with the District Director that extreme hardship to a qualifying relative had not been established, and the appeal was dismissed. *Decision of the AAO*, dated May 11, 2011.

The applicant was deemed inadmissible based upon a May 12, 2000 application for a non-immigrant visa at the U.S. Consulate in Warsaw, Poland. The applicant's Form OF-156, Nonimmigrant Visa Application indicated that the applicant had no immediate relatives in the United States. Subsequent information indicated that the applicant's father had entered the United States illegally from Canada, either in 1999, or at some later date.

On motion to reopen, counsel for the applicant asserts that the applicant had not lied to the consular officer nor had he admitted to having lied. Counsel further contends that the applicant never spoke to a consular officer, and that the entire non-immigrant visa process was conducted by the applicant's mother. Counsel further states that the applicant was unaware of the timeframe of his father's presence in the United States at the time of his non-immigrant visa application.<sup>1</sup>

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<sup>1</sup> The record indicates that, during an adjustment of status interview on April 7, 2007, the applicant stated that prior to his arrival in the United States, the applicant's father had been in the United States for at least two years. Counsel contends that this is an indication that the applicant was unaware of the time frame of his father's presence in the United States. The evidence in the record indicates that the applicant's mother applied for a visa to Canada in May 2001, one year after the applicant's non-immigrant visa application on May 12, 2000. The record further indicates that the applicant's mother told Canadian authorities that the applicant's father obtained a Canadian visa in 1999 and went to Canada, and then entered the United States illegally. The record also indicates that the applicant's father purchased a home in the United States in 2003, three years after the applicant applied for his non-immigrant visa for the United States. However, the record does not indicate the date that the applicant's father actually entered into the United States, nor does it establish that he had been in the United States two years prior to the applicant's 2000 arrival; the record only indicates that the applicant's father arrived illegally in the United States from Canada sometime during or after 1999.

In support of these contentions, the applicant submitted an affidavit stating that he did not participate in the application process at the U.S. Consulate in Warsaw, and an affidavit from the applicant's mother stating that she did all the work regarding the application for the applicant's non-immigrant visa. Further documentation includes a brief filed by the applicant's attorney in support of the motion to reopen, financial documentation, and other documentation in support of the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, and the applicant's initial Form I-290B, Notice of Appeal or Motion.

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

(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:

(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...

With respect to the finding of inadmissibility under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant has consistently maintained that he was not interviewed at the U.S. Consulate in Warsaw, Poland on May 17, 2000, and that his mother did all the work and filed the application on the applicant's behalf. The record indicates that the applicant was 17 years old at the time of his non-immigrant application to the United States.

In the AAO's May 11, 2011 decision to dismiss the applicant's appeal, the AAO states that there was no evidence in the record to support the assertion that the entire process at the U.S. Consulate was conducted by the applicant's mother. The record now contains a sworn affidavit from the applicant's mother, in which she indicates that she did all the work regarding the application for the visa at the U.S. Consulate in Warsaw, Poland.

The AAO finds that the evidence in the record supports the applicant's claim that he never had any contact with a U.S. Consular Officer during the non-immigrant visa application process, and that since he was a minor at the time, his mother prepared the visa application. Further, the record does not establish that the applicant's father had entered the United States before the applicant applied for the visa in May 2000, and it is therefore not clear that the statement on the application that he had no

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immediate relatives in the United States constituted a misrepresentation of a material fact. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

Thus, the AAO finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is unnecessary and will not be addressed. Accordingly, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.

**ORDER:** The motion is granted, the prior decision of the district director is withdrawn and the instant application for a waiver is declared unnecessary.