



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: **JUN 13 2013**

Office: KENDALL [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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Kendall Field Office Director, Miami, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The applicant filed a motion to reconsider the AAO's decision to dismiss the appeal. The motion was granted and the underlying application was denied. The matter is again before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native of Argentina and a citizen of Argentina and Italy 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 procuring admission to the United States through fraud or misrepresentation.<sup>1</sup> The applicant 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.

The Field Office Director concluded the applicant does not have a qualifying relative in the United States as described in section 212(i) of the Act, and denied the application accordingly. *Decision of the Field Office Director*, dated October 8, 2009.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that the applicant has no qualifying relative residing in the United States, as required by the Act. *Decision of the AAO*, dated March 12, 2012. Consequently, the appeal was dismissed. *Id.*

The applicant filed a motion to reconsider the AAO decision of March 12, 2012, asserting that she did not intend to commit fraud when she failed to reveal that she previously had been denied admission into the United States. The motion was granted, and the AAO determined that the record clearly reflected the applicant's willful failure to disclose a material fact; the underlying application remained denied. *Decision of the AAO*, dated January 16, 2013.

The record shows that the applicant attempted to enter the United States from Canada on July 28, 1996 under the visa waiver program using her Italian passport, and she was denied entry. On July 30, 1996, and subsequently on November 16, 1999, the applicant procured admission to the United States claiming Argentine citizenship through the visa waiver program. At the time of the applicant's admissions to the United States on July 30, 1996 and November 16, 1999, the applicant failed to declare that she had previously been denied admission to the United States on July 28, 1996.

On motion to reconsider, counsel again states that when the applicant signed the Form I-94W Arrival Card, she did not know that she had been denied admission to the United States, and that the

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<sup>1</sup> The Miami District Director previously found the applicant inadmissible for her unlawful presence of over one year under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), in her decision dated August 14, 2006, concerning the first Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), the applicant filed in March 2006. Though the decisions concerning the second Form I-601 the applicant filed in August 2009 do not reference this inadmissibility, it is harmless error given the applicant's lack of a qualifying relative under the relevant sections of the Act.

applicant was acting in good faith and had no intent to commit fraud upon the United States Government.

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.

As the AAO stated in its decision of March 12, 2012, the record clearly reflects that the applicant was denied a visa waiver and entry into the United States on July 28, 1996 and willfully failed to disclose this material fact in the Form I-94W so as to procure admission into the United States on July 30, 1996 and again on November 16, 1999. Given the evidence of record, the AAO finds that the applicant has not established that she did not know that she not previously denied admission on July 28, 1996. As such, despite counsel's assertion to the contrary, it has not been established, by a preponderance of the evidence that the applicant did not attempt to obtain admission by fraud and/or misrepresentation. Based on the record, we find the applicant inadmissible under section 212(a)(6)(C) of the Act for procuring admission into the United States by fraud or willful misrepresentation of a material fact.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met her burden.

Counsel further asserts that the applicant herself would suffer extreme hardship if the waiver application is denied and she is returned to Argentina because the applicant would lose her medical treatment in the United States, she is the mother of three U.S. citizens, and she does not have any family left in Argentina.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or

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lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant has not demonstrated that she has a qualifying relative in the United States. Accordingly, the applicant is not eligible for the section 212(i) waiver as she does not qualify relative.

In proceedings for application for waiver of grounds of inadmissibility under sections 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. The applicant has not met that burden. Accordingly, the application remains denied.

**ORDER:** The motion to reconsider is granted and the waiver application remains denied.