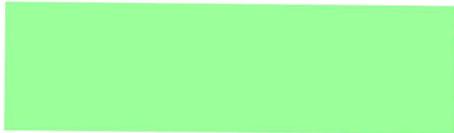




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JUN 21 2013**

Office: WASHINGTON FIELD OFFICE

FILE: 

IN RE: 

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,

f.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Washington Field Office Director, Fairfax, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed, the prior decision of the field office is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

The applicant is a native and citizen of the Philippines 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 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 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 field office 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 Field Office Director*, dated August 28, 2012.

On appeal, counsel asserts that the finding by the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is in error. *Brief in Support of Appeal*, dated October 26, 2012. 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 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 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 field office director's finding of inadmissibility, the field office director noted as follows:

On October 24, 2001, the former Immigration and Nationality (sic)

Service (INS) mailed a Notice of Intent to Deny (NOID) to the petitioner....

In response, on October 29, 2001, [redacted] [the petitioner] withdrew the I-129 Petition.... The Petitioner's attorney, [redacted] submitted a second request to withdraw from the I-129 Petition on October 31, 2001.

On November 10, 2001, the INS received a letter from the law firm of [redacted] stating that it was a response to the Notice of Intent to Deny the I-129 Non-Immigration Worker H-1B Petition. It is unclear why the petitioner would seek to obtain a different attorney and attempt to overcome the NOID after withdrawing the petition, or why the petitioner would fail to provide a Form G-28, Notice of Entry of Appearance by Attorney or Representative, if he did so....

The letter was accompanied by a Form G-28 signed by attorney [redacted] and by you [the applicant].... By signing the G-28 for the petitioner, you implicitly claimed the authority to act on the petitioner's behalf: This was an act of misrepresentation, resulting in inadmissibility.... The record does not reflect that the petitioner submitted any G-28 or requested the assistance of the law firm [redacted]....

*Supra* at 4-5.

On appeal, counsel contends that the applicant did not in any way claim to be acting on behalf of the sponsoring employer of her H-1B petition, [redacted], when she signed the Form G-28, Notice of Entry of Appearance (Form G-28) in November 2001. Counsel maintains that the applicant did sign one Form G-28 as the beneficiary, with [redacted] as the attorney of record, but that said Form G-28 clearly indicates that the petitioner is [redacted]. Further, the AAO notes that the response to the Notice of Intent to Deny (NOID) clearly indicates that the petitioner is [redacted] and the beneficiary is [redacted]. Counsel further provides the following letter from [redacted], formerly the President of [redacted] stating as follows:

I, [redacted] also known as [redacted] formerly the President of [redacted] having an office address of [redacted] Vernon, CA [redacted] hereby wish to state as follows:

That [redacted] filed an H1B nonimmigrant worker petition for [redacted]

That I authorized a new attorney to respond to the notice of intent to deny.

That the new attorney's name is [REDACTED]

That I signed numerous documents at the request of attorney [REDACTED] in his representation of [REDACTED] regarding the H1B notice of intent to deny. It has now been over 11 years.

That I did withdraw the H1B with the prior attorney, I then became dissatisfied with her service. [REDACTED] said he could resolve the matter so I authorized his representation of [REDACTED]....

See Notarized Affidavit of [REDACTED] dated October 23, 2012.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In the case at hand, the record fails to establish that the applicant, by fraud or willful misrepresentation, attempted to procure H1-B nonimmigrant status in the United States by claiming authority to act on the petitioner's behalf with respect to the response to the Notice of Intent to Deny. As noted in the affidavit referenced above, the petitioner did in fact authorize the law firm of [REDACTED] to represent his interests with respect to the Notice of Intent to Deny. While [REDACTED] may have erred in not submitting a Form G-28 on the petitioner's behalf when responding to the NOID<sup>1</sup>, and while confusion may have existed since the petitioner's first lawyer, [REDACTED] withdrew the H-1B petition days before the second lawyer, [REDACTED] submitted the NOID response, fraud or willful misrepresentation by the applicant has not been established. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the Form I-601 is not necessary.

Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether her U.S. citizen spouse has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

**ORDER:** The appeal is dismissed, the prior decision of the field office is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

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<sup>1</sup> The AAO notes that a copy of a Form G-28 signed by [REDACTED] President, [REDACTED] dated October 29, 2001, confirming that [REDACTED] was the attorney of record for "all immigration matters", is contained in the record. It is unclear to the AAO whether said form was in fact provided with the NOID response. Nevertheless, as noted above, the possibility that said Form G-28 was not submitted with the NOID response does not establish that the applicant attempted to procure H-1B approval by fraud or willful misrepresentation.