



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

(b)(6)

DATE: **JUN 24 2013** Office: SAN ANTONIO, TX File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) of the Immigration and Nationality Act (the 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
[Handwritten Signature]

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela who departed the United States on October 10, 1997, after being personally served on July 30, 1997 with a Notice to Appear, rather than appear for removal proceedings. On November 20, 1997, the Immigration Judge issued an in absentia removal order against the applicant. The applicant was found to be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having reentered the United States without admission after having been ordered removed. The applicant contests this finding of inadmissibility, contending that she reentered using her cousin's passport and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation, and seeks a waiver of this inadmissibility in order to reside in the United States with her U.S. citizen husband.¹

The field office director concluded the applicant had failed to show that she had been admitted or inspected, and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of Field Office Director, August 27, 2010.*

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant had not established having entered the United States using fraudulent documents and thus concluding she had reentered the country without inspection or parole.

In support of the appeal, counsel submits a brief and documentation including updated hardship statements, a copy of an airline ticket, and documentation concerning her parents' asylee status. The record on appeal includes the documentation submitted in support of the original waiver request. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General. - Any alien who-

....

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

¹ The applicant has also appealed the denial of her concurrently filed Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212).

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception. – Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

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

Misrepresentation

(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:

Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

(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 [...].

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date

of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

The applicant states she departed the United States on October 10, 1997, reentered the United States illegally in September 1998, and remained here until departing in November 2000, and that she again reentered illegally about a week later and has remained here since that time. The applicant maintains she procured both reentries as an impostor using the passport and visa of a relative, is thus inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and asserts entitlement to a waiver for extreme hardship. The field office director found, however, that she had provided insufficient evidence of having been inspected and admitted, and concluded she had reentered without inspection or parole, and deemed her inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for which no waiver is available.

The applicant bears the burden of proving eligibility for a waiver of inadmissibility under section 291 of the Act, 8 U.S.C. § 1361. Claiming to have lost the passport she used for both entries, the applicant provides only an airline ticket for travel to the United States in November 2000 in the name of the relative whose passport she purportedly used. This evidence is insufficient to prove inspection and admission of the applicant, as it fails to establish that the applicant – rather than the true owner of the passport – used the ticket, and does not without other corroborating documentation show that she procured admission by fraud rather than making an entry without inspection. The AAO further notes that on her Form I-485, Application to Adjust Status, submitted on August 8, 2008, and on her Form I-485 submitted on November 14, 2009, the applicant indicated that her last entry to the United States was on September 2, 1998. Both applications include an addendum to Part 3, Question 10 stating, “On September 2, 1998 Applicant entered the United States with a visa belonging to someone else, under the name of [REDACTED]. There is no mention of a November 2000 entry and no explanation on appeal of why the applicant previously stated her last entry was in September 1998 rather than November 2000.

Counsel for the applicant contends that USCIS erred in failing to issue a Notice of Intent to Deny (NOID) or Request for Evidence (RFE) giving the applicant the chance to provide evidence she was inspected or admitted before it denied the waiver in 2010. However, counsel has failed to provide such evidence on appeal. Nor does counsel state that the missing passport was, in fact, still available to the applicant between her November 2009 waiver application and its denial in August 2010. Further, we observe that, unless the applicant produces conclusive evidence of admission, the fact that she is present in the United States supports the field office director’s finding that she entered

without inspection. She bears the burden of establishing having used her cousin's passport and visa to procure admission by fraud.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), would only be applicable, thereby requiring the filing of the Form I-601 by the applicant, if the field office director had found that the applicant had been inspected and admitted to the United States by fraud or willful misrepresentation. The field office director determined that the applicant had failed to establish that she was inspected and admitted to the United States by fraud or willful misrepresentation, and the filing of the Form I-601 by counsel, and the subsequent I-601 appeal, are without merit.

The field office director concluded that the applicant has failed to establish that she used a fraudulent passport to gain admission to the United States. As the applicant was not found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act or any other ground waivable by the filing of Form I-601, the appeal will be dismissed.

ORDER: The appeal is dismissed.