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

U.S. Citizenship and Immigration Services

DATE: MAR 0 4 2013 OFFICE: SANTA ANA 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Santa Ana, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application declared unnecessary.

The applicant is a native and citizen of Turkey 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 procuring a visa and admission into the United States by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

In a decision dated May 10, 2012, the director determined the applicant failed to establish that his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal the applicant asserts, through counsel, that the totality of the evidence establishes the applicant's wife would experience extreme hardship if the waiver application were denied. Counsel submits no new evidence on appeal.

The record includes, but is not limited to, affidavits from the applicant's wife, medical documentation, financial evidence and photographs. The entire record was reviewed and considered in rendering 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.

There must be some evidentiary basis for a Service conclusion that an alien is inadmissible under the Act. Agency fact-finding shall be accepted if the evidence permits a reasonable fact-finder to make the inadmissibility finding. *See INS v. Elias-Zacarias,* 502 U.S. 478 (1992).

In order to find the element of willfulness, it must be determined that the alien "knowingly, intentionally, and deliberately misrepresented material facts." *See Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956). The willful misrepresentation of a material fact must be made to an authorized official of the U.S. 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).

In the present matter, the record reflects the applicant, a hairstylist, obtained a nonimmigrant B1 visa on February 23, 2010, to attend a work-related convention in Chicago. The applicant was admitted into the United States on March 4, 2010 with permission to remain until June 3, 2010. The applicant did not attend the convention and did not depart the United States. He married a U.S. citizen on July

21, 2010. He filed a Form I-485, Application to Register Permanent Residence or Adjust Status on June 20, 2011.

The director determined the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, because he stated under oath during his adjustment of status interview that he did not attend the convention in Chicago.

The applicant does not contest the inadmissibility finding under section 212(a)(6)(C)(i) of the Act; however, he states on his Form I-601 that he entered the United States" for the purpose of going to a hair show which [he] did not attend," and that he fell in love with and married his wife. The record contains unsigned interview notes reflecting that the purpose of the applicant's visit to the United States was to "see a hair show"; he did not attend the show because his employer failed to send his ticket; and he subsequently met and fell in love with his wife. The record contains no other statements by the applicant on the issue. No information in the record indicates that when he applied for and obtained his non-immigrant visa, the applicant misrepresented his intent to attend the convention in Chicago and then return to his country. The record also contains no documentary evidence to demonstrate the applicant misrepresented his intent to attend the beauty conference and to return to Turkey when he entered the United States on March 4, 2010.

The Department of State Foreign Affairs Manual instructs, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, apply for adjustment of status to permanent resident." *See DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(1). The Department of State developed the 30/60-day rule which applies when "an alien states on his or her [nonimmigrant visa application], or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status" by engaging in an activity for which adjustment of status would be required. *Id.* at § 40.63 N4.7-1. Under this rule, if violative conduct occurs within 30 days of entry, it is presumed "that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-3. "When violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for a section 212(a)(6)(C)(i) of the Act ineligibility." *Id.* at § 40.63 N4.7-4.

Although not bound by the Foreign Affairs Manual, the AAO finds its analysis in these situations to be persuasive. In the present case, the applicant married and applied for U.S. permanent residence after entering on a B1 visa. The applicant's marriage and application for permanent residence is violative conduct under the 30/60-day rule; however, the marriage took place on July 21, 2010, and the application for permanent residence took place on June 20, 2011. Both of these events occurred more than 60 days after the applicant's admission into the country on March 4, 2010. Moreover, the Service found that the applicant's marriage to be *bona fide*, and the applicant's Form I-130, filed June 20, 2011 was approved on December 2011.

Upon review of the totality of the evidence, the AAO finds the record contains insufficient evidence to establish that the applicant willfully misrepresented a material fact to procure his visa or

admission into the United States. Accordingly, the AAO finds the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The Form I-601 is therefore unnecessary, and the appeal will be dismissed.

ORDER: The appeal is dismissed and the application for a waiver of inadmissibility is declared unnecessary.