



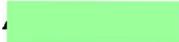
U.S. Citizenship
and Immigration
Services

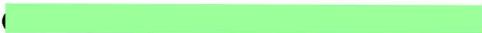
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Date: **MAR 08 2013**

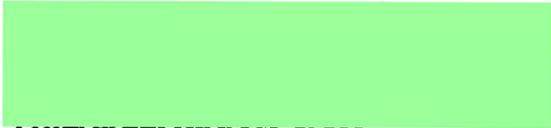
Office: BANGKOK

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 1182(d)(11)

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.

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 District Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 attempting to procure admission into the United States by fraud or the willful misrepresentation of a material fact. The applicant applied for an immigrant visa based on her derivative status as the spouse of a legal permanent resident with an approved Petition for Alien Worker (Form I-140). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to live with her legal permanent resident spouse and legal permanent resident son.

The District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the District Director*, dated August 5, 2011.

On appeal, the applicant's attorney asserts that the District Director relied upon a hardship standard that is contrary to Board precedent. The applicant's attorney further contends that the District Director erred by improperly basing his decision in part on the qualifying spouse's relocation to the United States over twelve years ago and on his failure to establish a long-term relationship with a mental health professional, despite his economic constraints.

On January 7, 2013, the AAO issued a Notice of Intent to Dismiss (NOID) the applicant's appeal of the denial of her waiver application based on her inadmissibility under section 212(a)(6)(E)(i) of the Act for encouraging, inducing, assisting, abetting or aiding another alien to try to enter the United States in violation of law. The applicant was granted thirty (30) days to submit a rebuttal. As of the date of this decision, no response has been received. The AAO will consider the record as complete and will decide this matter based on the evidence in the record.

The record includes, but is not limited to, an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; an article regarding families separated by U.S. deportation policy; relationship and identification documents for the applicant, qualifying spouse and their child; a statement and affidavits from the applicant, qualifying spouse, their son, a cousin and a friend; photographs; medical documentation regarding the applicant and qualifying spouse; psychological evaluations of the qualifying spouse and their son; and an Application for Immigrant Visa and Alien Registration (DS-230). 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:

- (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, in pertinent part:

- (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.

The record indicates that the applicant attempted to enter the United States on December 4, 2002 by presenting a fraudulent Indian passport and non-immigrant visa to U.S. immigration officers at John F. Kennedy International Airport. She was accompanied by her son and a girl she called her daughter. She was expeditiously removed the following day. As a result of the applicant's misrepresentations, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Counsel does not contest her inadmissibility.

Further, as the applicant did not provide any evidence to refute her inadmissibility under section 212(a)(6)(E)(i) of the Act, the applicant also is inadmissible under section 212(a)(6)(E)(i) of the Act for encouraging, inducing, assisting, abetting or aiding another alien to try to enter the United States in violation of law. The applicant's DS-230 indicates that she has one child, a son. However, on December 5, 2002, after the applicant arrived at John F. Kennedy International Airport in New York, she signed a sworn statement indicating that she was traveling with her son and daughter. The applicant was later interviewed by U.S. consular officials in New Delhi, India in connection with her waiver application. In her interview, she stated that the person who gave her the fraudulent documents also brought her a female child and her paperwork with whom to board the plane. The record also contains a copy of the applicant's son's legal permanent resident card and an affidavit from him. In his affidavit, he states that he lived with his mother and grandmother in India when his father left for the United States. He does not mention that he has any siblings.

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

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The applicant stated that she was traveling with her son and daughter in her sworn statement before U.S. inspectors in December 2002. The record lacks evidence that the applicant has a daughter. The record includes a summary of the applicant's immigrant-visa interview in New Delhi in 2007, during which she stated that the individual who gave her fraudulent documents to travel to the United States also gave her a female child and the child's documents to accompany her. The record appears to reflect that the applicant knowingly assisted, abetted, and aided another alien to try to enter the United States in violation of the law.

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Section 212(d)(11) of the Act provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The applicant must establish that the individual she aided to try to enter the United States illegally was her daughter. As the applicant has failed to do so, she is statutorily ineligible for a waiver under section 212(d)(11) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the AAO provided the applicant with notice of its intent to dismiss the appeal. The applicant was granted thirty (30) days from the date of the notice to respond. As the applicant did not respond within the allotted time period and has not shown that she is eligible for an exception from section 212(d)(11) inadmissibility, the appeal will therefore be dismissed.

ORDER: The appeal will be dismissed.