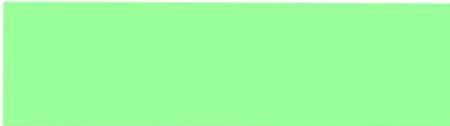




**U.S. Citizenship
and Immigration
Services**

(b)(6)



MAR 21 2013

DATE:

OFFICE: ST. PAUL, MN

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, St. Paul, Minnesota, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the waiver application will be declared unnecessary.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure an immigration benefit by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 her spouse and children.

In a decision dated January 10, 2012, the director determined the applicant had failed to establish that a qualifying relative would experience extreme hardship if she 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 her U.S. citizen spouse and mother would experience extreme hardship if her waiver application were denied. To support her assertions, counsel submits letters from the applicant, her husband, and her mother; financial and medical documentation; academic information for the applicant's husband and son; and country conditions evidence.

The record also includes letters from the applicant's daughter and friends, photographs, and family immigration and citizenship information. 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961) the Board of Immigration Appeals (Board) defined the elements of a material misrepresentation as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

In the present case, the director determined the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act based on inconsistent statements the applicant made during two interviews conducted on March 16, 1993 and November 14, 1994, specifically regarding whether her ex-husband had met her mother and whether she resided with him at the time of her interviews. The Form I-130 was denied on January 12, 1995, because the director concluded that the applicant's inconsistent statements established that her first marriage was entered into for the purpose of an immigration benefit.

The applicant divorced her ex-husband in March 2005, and her current husband filed another Form I-130 on her behalf on October 20, 2006.¹ The Form I-130 was denied on February 2, 2009, on the basis that the applicant's first marriage was a "sham marriage," and the applicant was therefore ineligible to obtain an immigration benefit under section 204(c) of the Act, 8 U.S.C. § 1154(c).²

The applicant appealed the finding that her first marriage was a sham marriage to the Board. On remand, USCIS concluded that although some of the applicant's statements in 1993 and 1994 were inconsistent, they did not demonstrate that her marriage to her first husband was a sham marriage. The Form I-130 filed by the applicant's current husband was approved accordingly on March 16, 2010. In addition, removal proceedings initiated against the applicant on July 6, 2004 were terminated without prejudice on May 19, 2010, to allow her to proceed with her adjustment of status application.

The purpose of the Form I-130 petition is to establish for immigration purposes whether a marriage is *bona fide*. In order to make this determination and as noted in this case, USCIS often interviews the petitioner and beneficiary. Here, the record reflects that although the applicant responded inconsistently during her March 1993 and November 1994 interviews to questions about where she

¹ A Form I-130 he filed earlier was withdrawn because the applicant was still legally married to her ex-husband when the petition was filed. Additionally, a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant filed by the applicant in November 2004 was denied on August 10, 2006, based on the applicant's marriage to her current husband.

² A "sham marriage" occurs when the parties entered into the marriage solely to circumvent immigration laws, and with no intent or good faith to live together. *See Matter of Patel*, 19 I. & N. Dec. 774 (BIA 1988). Moreover, no petition shall be approved if U.S. Citizenship and Immigration Services (USCIS) determines that the alien has entered into, or conspired to enter into, a sham marriage. *See* section 204(c) of the Act.

(b)(6)

Page 4

lived and whether her ex-husband and mother had met, her responses were not material. She was neither excludable on the true facts, given that her marriage to her ex-husband was determined to be *bona fide*, nor was a line of inquiry relevant to her eligibility for the benefit cut off. After the Board remanded the applicant's Form I-130, USCIS determined that her first marriage was not a sham marriage, and approval of the Form I-130 petition filed by the applicant's current husband necessarily rests on this finding.

Based on the record the AAO finds that the applicant did not misrepresent a material fact to procure a benefit provided under the Act. Accordingly, 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 as the applicant is not inadmissible, and the application for a waiver of inadmissibility is declared unnecessary.