



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

(b)(6)

DATE: **SEP 06 2013** Office: MIAMI, FL FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Miami, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the application would still be denied as a matter of discretion. The field office director denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering her mother's various medical problems, the fact that the applicant financially supports her mother, and country conditions in Cuba. Counsel also contends the applicant has no criminal record and is a person of good moral character.

The record contains, *inter alia*: a letter from the applicant's mother, [REDACTED] a letter from a psychiatric services unit; articles addressing depression and panic disorder; letters of support; financial documents; a copy of the U.S. Department of State's Human Rights Report for Cuba and other background information; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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(a)(6)(E) of the Act provides:

(6) Illegal entrants and immigration violators . . .

(E) Smugglers.--

(i) In general.--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. . . .

(iii) Waiver Authorized.--For provision authorizing waiver of clause (i), see subsection (d)(11).

In this case, the field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. In the field office director's decision denying the applicant's Form I-485 application, the field office director also found that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act for alien smuggling. Specifically, the field office director found that the applicant entered into a fraudulent marriage in order to assist her husband, an alien from Peru, obtain permanent residence through fraud.

After a careful review of the record, the AAO remands the matter to the field office director as there is insufficient documentation in the record to substantiate the applicant's inadmissibility. The record shows the applicant is a native and citizen of Cuba who filed an adjustment of status application based on section one of the Cuban Adjustment Act. While the record indicates the applicant may have married an alien in order to assist him adjust his status, there is no evidence in the record showing that the applicant ever applied for admission to the United States or any other benefit under the Act for herself based on her marriage. As such, the AAO finds that there is insufficient evidence in the record to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

With respect to alien smuggling, the plain language of the statute specifies that an alien is inadmissible if she "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." See section 212(a)(6)(E)(i) of the Act (emphasis added). In this case, the record suggests the applicant's husband was already in the United States when they met and subsequently got married. There is no evidence the applicant assisted her husband in entering, or attempting to enter, the United States.

The AAO remands the matter to the field office director to re-evaluate whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act or section 212(a)(6)(E)(i) of the Act. The field office director shall issue a new decision addressing the specific actions the applicant took which would render her inadmissible. The new decision, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.