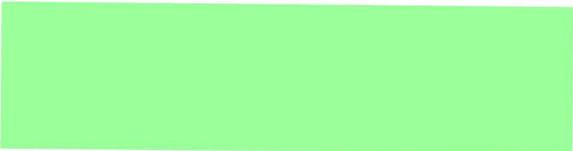


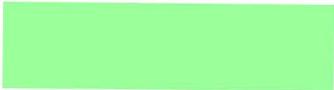


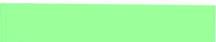
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JAN 31 2014** Office: SANTA ANA, CA



IN RE: Applicant: 

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, California, 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 Vietnam 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 married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, filed on May 7, 2012 and received by the AAO on October 7, 2013, the applicant contends that her husband needs her assistance. She states her husband is seventy years old, has severe hypertension, and has no other relatives to take care of him.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] letters of support; copies of tax documents, bank account statements, and other financial documents; 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.

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 reflects that the applicant entered the United States on January 9, 2009, using an apparently valid B-2 visitor's visa. The record also reflects that the applicant married her husband, [REDACTED] on January 20, 2010 and a Form I-130 was approved on August 26, 2011.

In his decision, the field office director indicated that the applicant filed an I-601 for a waiver under section 212(i) of the Act, which applies to applicants inadmissible under section 212(a)(6)(C) of the Act. The record, however, reflects that on August 26, 2011 the field office sent a notice to the applicant informing her that she appeared to be "inadmissible to adjust status as a permanent resident..." The reason checked for the inadmissibility was "You have been unlawfully present in the United States and worked without authorization since July 2009."

There is no evidence in the record that the applicant has departed the United States since her arrival, so it has not been established that she is inadmissible under section 212(a)(9)(B) of the Act for unlawful presence, and working without authorization does not render an applicant inadmissible. The notice further advised the applicant that she was eligible to apply for a waiver. On September 13, 2011 the applicant filed the present Form I-601. The Form I-601 provides an applicant with a selection of grounds of inadmissibility which would apply to his or her situation. On the applicant's Form I-601, none of the boxes related to grounds of inadmissibility was checked and there is no other indication on the Form I-601 that the applicant was admitting to any ground of inadmissibility.

As the applicant has claimed no inadmissibility and there is conflicting information and a lack of clear evidence supporting the finding of inadmissibility by the field office director, there is insufficient evidence in the record to support a finding of inadmissibility under section 212(a)(6)(C)(i) or any other ground of inadmissibility found in the Act.

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 any other section of the Act. Should the applicant be found to be inadmissible, the field office director shall issue a new decision addressing the specific actions the applicant took which would render her inadmissible, and addressing the merits of the applicant's waiver application. The new decision, if adverse to the applicant, is to be certified to the AAO for review. In the alternative, should the applicant be found *not* inadmissible, the applicant's Form I-601 and accompanying Form I-290B will be unnecessary and the field office should continue with the processing of the applicant's adjustment application.

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