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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 05 2014**

OFFICE: BALTIMORE DISTRICT

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland denied the waiver application and 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 Nigeria who was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that jurisdiction over the Application to Register Permanent Residence or Adjust Status (Form I-485) lies solely with the immigration court because it was filed while the applicant was in removal proceedings, and denied the application accordingly. See *Decision of the District Director*, dated May 22, 2009.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. See *Decision of the District Director*, dated December 10, 2012.

The applicant subsequently filed a Notice of Appeal or Motion (Form I-290B), received January 9, 2013. The district director treated the Form I-290B as a motion, reopened the Form I-601 on August 15, 2013, and concluded that despite counsel's assertions to the contrary, the applicant failed to submit new evidence in support of her application and failed to show that USCIS made incorrect findings of fact or law. Accordingly, the Form I-601 application remained denied. See *Decision of the District Director*, dated September 16, 2013.

The same Form I-290B is now before the AAO on appeal.

The record contains, but is not limited to: Form I-290B, counsel's statement thereon, and a subsequent appellate brief; various immigration applications and petitions; hardship affidavits from the applicant's spouse; affidavits from the applicant's children; letters of character reference and support; a psychological evaluation; employment, business, tax and financial documents; birth, marriage and divorce certificates; a passport; records related to the applicant's immigration court/removal proceedings; and several sworn statements from the applicant and her spouse. The entire record was reviewed and considered in rendering this 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.

The record shows that on May 20, 1991 the applicant entered the United States at Washington, D.C., and was admitted as a B-2 visitor for a period not to exceed six months. The passport on which the applicant entered the United States bore the name [REDACTED]. In a sworn statement signed by the applicant on April 29, 1992, she testified that she is a native and citizen of the United Kingdom and possesses a Nigerian passport that indicates she is also a Nigerian citizen and which she obtained so she could travel to Nigeria. The applicant stated that she was lawfully admitted to the United States on May 20, 1991 but remained after the period authorized by her visa. On the same date an Order to Show Cause and Notice of Hearing was served by personal service upon the applicant. The applicant was placed into deportation proceedings on April 29, 1992 and charged under section 241(a)(1)(B) of the Act, for remaining in the United States for a longer time than permitted. On August 12, 1992, a Notice of Hearing in Deportation Proceedings was issued directing the applicant to appear before an immigration judge on September 30, 1992. On September 30, 1992, the immigration judge granted the applicant voluntary departure. The applicant has not subsequently departed the United States, thus her grant of voluntary departure was automatically converted to a final order of deportation and she remains in deportation proceedings.

The record shows that during her adjustment of status interview on August 14, 2012 the applicant stated under oath that the passport and visa with which she entered the United States on May 20, 1991 belonged to her niece, [REDACTED] whose identity she assumed. The applicant further stated that despite her prior verbal statements and assertions on Form I-130, she was born in Nigeria, not the United Kingdom, and is a citizen of Nigeria alone. The applicant then denied that she was ever in removal proceedings, stood before any judge, or was asked to depart the United States voluntarily, or that she agreed to do so. This is contrary to the record. Based on the foregoing, the district director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest inadmissibility and the AAO concurs that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The district director denied the applicant's Form I-485 on May 22, 2009 noting that insofar as the applicant failed to voluntarily depart the United States, she remains in removal proceedings. As the applicant filed her Form I-485 application to adjust status while in removal proceedings, jurisdiction over that application lies solely with the immigration court.

Pursuant to 8 C.F.R. § 245.2(a)(1), USCIS has jurisdiction to adjudicate an application for adjustment of status, unless the immigration judge has jurisdiction to adjudicate the application under 8 C.F.R. § 1245.2(a)(1). 8 C.F.R. § 1245.2(a)(1) provides that in the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.

The district director denied the applicant's Form I-485 application because USCIS does not have jurisdiction over it as the applicant is in removal proceedings. The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on a pending Form I-485,

Application to Adjust Status or other underlying application for admission. As the applicant has no pending application for adjustment of status and USCIS does not have jurisdiction to adjudicate her application for adjustment of status, no purpose would be served in adjudicating the Form I-601. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.