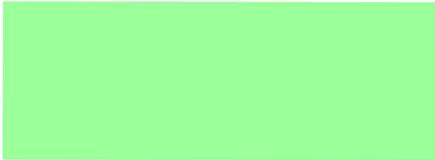


(b)(6)

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

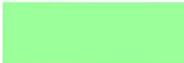


U.S. Citizenship
and Immigration
Services

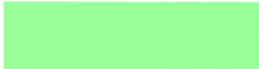


Date: **MAY 19 2014**

Office: TAMPA FIELD OFFICE

FILE: 

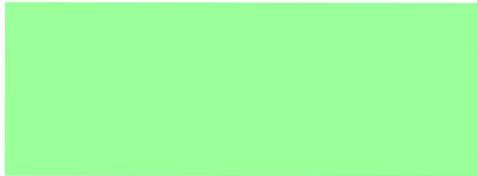
IN RE:

Applicant: 

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:

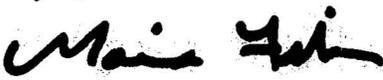


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Switzerland 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 a benefit in the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office 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 Field Office Director* dated February 26, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred in finding the applicant inadmissible as there was no indication of knowing, willful, material misrepresentation in a prior Application to Adjust Status (Form I-485). Counsel further asserts that the applicant has shown extreme hardship to her spouse if she were found inadmissible. With the appeal counsel submits a brief, statements from the applicant and her spouse, and a copy of a U.S. Court of Appeals decision. The record also contains financial documentation, court documents for the applicant for a traffic violation, letters of support from friends of the applicant, conviction documentation for [REDACTED], and documents in support of the applicant's Application to Adjust Status filed in 2010. 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 that:

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.

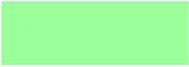
With respect to the applicant's inadmissibility, the decision of the field office director notes that in the applicant's 1995 Application to Adjust Status (Form I-485) she did not indicate a basis of her adjustment, and she indicated she was widowed. The director notes that the applicant was then issued an employment authorization card. In finding the applicant inadmissible for misrepresentation the director found that the applicant's divorce decree shows she was married at the time she filed for adjustment of status in 1995, and that at the time of filing she was not the beneficiary of a pending or approved visa petition nor was there any section of law that would support favorable action on her adjustment of status application. The director therefore determined that the applications submitted by the applicant for adjustment of status and employment authorization were frivolously filed and not meritorious in that the applicant filed those applications for the sole purpose of obtaining employment authorization. Based on this determination the director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal counsel asserts that the applicant's previous application to adjust status was filed by an individual perpetuating fraud against the applicant and that she did not then pursue the application although she did subsequently receive an employment authorization card. Counsel states that as the applicant did not allege a basis for her application to adjust status, it cannot be found that there was a willful, material misstatement. Counsel also asserts that whether the applicant was widowed at the time of filing the application is not material, as there was no underlying petition submitted and no section of law identified connected with widow status. Counsel further asserts that there is no indication of any untruthful information provided by the applicant that is relevant to any immigrant classification.

It is noted that on the Form I-485 filed in 1995 the applicant checked "widowed" for her marital status. On that same form the applicant did not check any section of law under which she qualified for adjustment of status, and records reflect that she had no pending petitions or applications at that time.

The issue becomes whether the applicant's filing of form I-485 without indicating a section of law under which she qualifies for adjustment and indicating incorrectly that she was "widowed" constitutes a willful misrepresentation of a material fact that would render her inadmissible under section 212(a)(6)(C)(i) of the Act. The record does not support a finding that the applicant presented false information or concealed information in an effort to gain a benefit or to affect her eligibility given that no underlying petition had been filed. There is no evidence that the applicant submitted any documentation other than the Form I-485. As she did not indicate a section of law under which she was eligible to adjust status, the applicant did not present false information in an attempt to appear eligible for a benefit that she was actually not qualified to obtain. Although the application indicates "widowed", the applicant filed no other application and there was no underlying petition for which being widowed would have been a qualifying factor.

Based on the record, the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit through willful misrepresentation of a material fact.



NON-PRECEDENT DECISION

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As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is unnecessary and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the instant application for a waiver is declared unnecessary.