



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 01 2014**

Office: KENDALL

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:

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. 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Kendall, Florida. 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 Bolivia who was found to be 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's daughter is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant did not have a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated May 20, 2014.

On appeal, the applicant asserts she is not required to apply for a waiver, as the misrepresentation occurred in 1995, before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); alternatively, the waiver application should be adjudicated using the same definition of qualifying relationship that existed before IIRIRA was enacted; the application should be approved for humanitarian reasons, as the applicant's son-in-law is a soldier in the U.S. Army; and the application of section 212(a)(6)(C)(i) of the Act may be waived for aliens classified under sections 204(a)(1)(A)(iii)-(iv) and (B)(ii)-(iii) of the Act. *Brief in Support of Appeal Accompanying Form I-290B, Notice of Appeal or Motion*, dated June 9, 2014.

The record includes, but is not limited to, counsel's brief, military records, documents establishing relationships and identity, and statements from the applicant's daughter and son-in-law. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant provides no legal authority for her assertion that IIRIRA does not require her to file a waiver or that we should adjudicate her waiver application using the definition of qualifying relationship that existed before the enactment of IIRIRA. Although the applicant was admitted into the United States in 1995, she filed her waiver application in 2013, several years after the relevant provisions of IIRIRA took effect. *See In re Cervantes-Gonzalez*, 22 I&N Dec. 560, 563(BIA 1999) (finding new provisions of section 212(i) of the Act apply to cases that were pending when the relevant provisions of IIRIRA took effect) (citations omitted); see also *Memorandum from Paul Virtue, Act. Exec. Assoc. Comm'r., Programs, to Field Leadership*, "New Waiver Provisions, INA 212(i)," dated June 20, 1997 (96 Act #029 HQIRT 50/5.12 (available online at <http://www.uscis.gov/sites/default/files/ilink/docView/AFM/DATAOBJECTS/Appendix40-2.pdf>). The applicant's case therefore will be adjudicated under the current version of the Act.

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 the Secretary 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The applicant is not the spouse, son or daughter of a U.S. citizen or of an alien lawfully admitted for permanent residence. Therefore, she does not have a qualifying relative under the first part of section 212(i) of the Act. Moreover, her son-in-law is not a qualifying relative under section 212(i) of the Act. In addition, the applicant was not granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) of the Act or clause (ii) or (iii) of section 204(a)(1)(B) of the Act. The second part of section 212(i) of the Act does not apply to her.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.