



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-M-

DATE: DEC. 17, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of St. Lucia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, New York District Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed. The matter will be remanded to the Director, New York District Office, for further proceedings consistent with this opinion.

The Applicant 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 admission to the United States through fraud or misrepresentation. The Applicant was also found to be inadmissible under section 212(a)(6)(E), 8 U.S.C. § 1182 (a)(6)(E), as an alien who knowingly encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility to remain in the United States with her U.S. citizen daughter.

In a decision dated February 4, 2015, the Director determined that the Applicant had not established extreme hardship to a qualifying relative and denied the waiver application accordingly.

On appeal the Applicant asserts that she did not admit to using a fraudulent passport to enter the United States or to knowingly participating in smuggling of aliens into the United States, as indicated in the Director's decision, and that her daughter will suffer extreme hardship if the Applicant is removed. On appeal the Applicant submits a brief, an affidavit from the Applicant's daughter, and a previously-submitted psychological evaluation of the daughter. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(a)(6)(E) of the Act provides:

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).

Subsection (d) provides:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the Applicant last entered the United States on May 24, 2000, as a B-2 visitor. The Director's decision states that according to records and her own admission at her adjustment of status interview on September 22, 2014, the Applicant used a fraudulent passport or

identity to gain entry to the United States. A review of the Applicant's sworn statement does not show that she admitted to having entered the United States by fraud or misrepresentation, and a review of the record, including a Notice to Appear before an immigration judge, does not indicate that the Applicant procured entry to the United States by fraud or misrepresentation. Rather, the record reflects that the Applicant entered the United States as a B-2 visitor on May 24, 2000, with authorization to remain for a period not to exceed three months. Although the decision states that records show that the Applicant procured an immigration benefit by using a fraudulent passport or identity to enter the United States, it is unclear from the decision the basis for this finding, and the record indicates that the Applicant entered the United States with a valid visa under her own name.

As the record establishes that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, a waiver of inadmissibility is not necessary, and the Form I-601 is moot. The Applicant was also found inadmissible under section 212(a)(6)(E) of the Act, for which no waiver is available except for involvement in smuggling a spouse, parent, son, or daughter. The Applicant asserts that at her adjustment of status interview, there was no direct or indirect admission of participation in the smuggling of illegal aliens. Upon review of the Applicant's statement made at her interview, it does not appear that she admitted involvement in smuggling.¹ The questions asked of the Applicant at her adjustment of status interview and the responses she gave provide insufficient detail to conclude that she was involved with the smuggling of aliens into the United States.

The record does not demonstrate that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and the Form I-601 is therefore moot. We further note that the basis for finding the Applicant inadmissible under section 212(a)(6)(E) of the Act is unclear, but if the Applicant were found inadmissible under this ground, it appears no waiver would be available. As the Form I-601 is moot, the appeal will be dismissed as unnecessary, and the matter will be remanded for further proceedings consistent with this opinion.

ORDER: The appeal is dismissed. The matter is remanded to the Director, New York District Office, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of A-M-*, ID# 13791 (AAO Dec. 17, 2015)

¹ The questions asked of the Applicant refer to her delivering money to one or more individuals, but do not specifically reference alien smuggling or the identity of anyone who may have been smuggled.