



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 11 2015** Office: NEBRASKA SERVICE CENTER 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:

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. 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 Director, Nebraska Service Center, 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 Mexico 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 procuring admission to 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 reside in the United States.

The director found that the applicant failed to establish that she has a qualifying relative through whom she has eligibility for a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director* dated May 7, 2014.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that the finding of inadmissibility is erroneous as she never knowingly or intentionally falsified any information and that denying her application would result in extreme hardship to her children by not having their mother part of the family. With the appeal the applicant submits a declaration. The record contains evidence submitted in conjunction with the petition. 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.

The director states that at her visa interview with the U.S. consulate, the applicant stated that when she entered the United States in July 1986 with a tourist visa she indicated that her intended purpose was to visit when in fact she intended to reside, and she then remained until 1991. Based on this information the director determined the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. On appeal the applicant asserts that she never stated that she entered the United States to live, but rather stated that she entered with a tourist visa and remained

longer because her husband received a job offer. The applicant states that she and her husband entered the United States in June 1986 on a visitor's visa and that a brother of the applicant's husband then offered her husband a job. The applicant states that her husband accepted the job and she and her husband then returned to Mexico in July 1991.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The applicant has not provided any detail of her entry in the United States in 1986 or submitted other objective evidence to support her assertion that she had not stated at her visa interview that she had intended to reside in the United States when entering with a visitor visa. The director determined that the applicant admitted to a consular officer that when she entered the United States with a tourist visa that her intention was not to visit but to live. The unsupported assertions of the applicant to the contrary are insufficient and the applicant has thus failed to establish that section 212(a)(6)(C)(i) of the Act does not apply to her.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes only the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant has failed to demonstrate that she has a U.S. citizen or lawful permanent resident spouse, mother or father. Rather, on the applicant's Form I-601 she indicates that the person through whom she seeks eligibility is her son. While the applicant has shown that she has children who are U.S. citizens, an applicant's children are not qualifying relatives for purposes of a waiver of inadmissibility under section 212(i) of the Act. Because the applicant does not have a qualifying relative, she is ineligible to seek a waiver under Section 212(i).

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.