



U.S. Department of Justice
Immigration and Naturalization Service

H2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE: [Redacted] Office: St. Louis

Date: AUG 3 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

g date decided to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was approved by the Officer in Charge, St. Louis, Missouri, and is the matter has been certified to the Associate Commissioner for Examinations for review. The decision of the officer in charge will be affirmed.

The applicant is a native and citizen of Egypt who was admitted to the United States on May 27, 1994 as a nonimmigrant visitor. She was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured a visa and admission into the United States by fraud or willful misrepresentation in 1994. The applicant is the spouse of a United States citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to remain in the United States and reside with her U.S. citizen spouse and alien child.

The officer in charge approved the waiver application as a matter of discretion.

The record reflects that the applicant used a fraudulent Egyptian birth certificate to obtain an Egyptian passport for her son under a different name. The applicant used that fraudulent passport to procure a nonimmigrant visa for her son and the applicant used that document to procure her son's admission into the United States by fraud.

The applicant's former spouse is [REDACTED]

[REDACTED] The child's father accuses the applicant of taking the child from Egypt in violation of law and a court judgement. The child's father argues that the child was illegally smuggled out of Egypt and the applicant essentially kidnapped the boy since she did not have legal custody.¹

A divorce agreement in the record reflects that the applicant's mother was granted custody of the child and the child's father was given visitation rights. The divorce agreement is silent regarding any travel restrictions for the child.

¹The Library of Congress, Law Library, Eastern Law Division, has provided an advisory opinion regarding the issue of child custody in this matter. That opinion indicates that Egyptian law of domestic relations gives priority to the mother for the custody of the child. She is followed, in the event of her incapacity or disqualification, by the maternal female relations of the child, and if none are available, then with the female paternal relations. No such incapacity or disqualification has occurred in this matter. The right of the mother to the custody of her child is a consequence of her motherhood and not her marital relationship. The separation or divorce of the child's parents, in other words, has no effect on the mother's right to the custody of the child. Consequently, according to the advisory opinion prepared by the Library of Congress, the applicant in the matter at hand retains legal custody of her child under Egyptian law.

The issue before the Associate Commissioner involves the issue of fraud and a waiver of that ground of inadmissibility under § 212(i) of the Act. Should the issue of the commission of a crime involving moral turpitude arise relating to "kidnapping," that matter would be addressed in another proceeding.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

In Matter of Goldeshtein, 20 I&N Dec. 382 (BIA 1991), rev'd on other grounds, 8 F.3d 645 (9th Cir. 1993), held that an application for discretionary relief, including a waiver of inadmissibility under § 212(h) of the Act, may be denied in the exercise of discretion without express rulings on the question of statutory eligibility (extreme hardship).

Following the Board's rationale, the Associate Commissioner concludes that an application for discretionary relief, including a waiver of inadmissibility under § 212(i) of the Act, may be approved in the exercise of discretion without express rulings on the question of statutory eligibility (extreme hardship). The officer in charge has approved the present waiver application as a matter of discretion. Since there is nothing adverse in the present record to that decision, the decision will be affirmed.



The decision of the officer in charge to approve an immigrant visa petition and an application to register permanent residence or adjust status need not be addressed in this proceeding.

ORDER: The decision of the officer in charge is affirmed.