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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

APR 05 2004

FILE: [redacted] Office: NEW DELHI, INDIA Date:

IN RE: [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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application will be declared moot.

The applicant is a native and citizen of India who was found by a consular officer 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 having attempted to obtain a visa by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on December 11, 2000. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks the above waiver of inadmissibility in order to reside in the United States with her husband.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Officer in Charge, dated July 30, 2002.

On appeal, counsel contends that the Department of Homeland Security [Citizenship and Immigration Services] erred in finding that the applicant committed fraud or willful misrepresentation. Counsel asserts that the adverse decision is based on a misunderstanding. *See* Form I-290B, dated August 15, 2002.

The record contains a copy of the Indian passport issued to the applicant; a copy of the U.S. passport of the applicant's spouse; copies of airline tickets and boarding passes evidencing travel by the applicant's spouse; an affidavit of the applicant's spouse, dated February 23, 2000; a color photograph of the applicant and her spouse together; a copy of the marriage certificate of the applicant and her spouse; copies of divorce decrees for two of the prior spouses of the applicant's husband; a copy of the death certificate for the third wife of the applicant's husband; a copy of a statement from the applicant's husband withdrawing his pending Form I-129F petition filed on behalf of the applicant, dated August 1, 2000; a letter from the applicant, dated August 10, 2002 and a copy of the naturalization certificate of the applicant's spouse. 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:

> (1) 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 record reflects that a consular officer determined that the applicant attempted to obtain a visa for entry into the United States by falsely representing herself to be the fiancée of an American citizen when in fact, she and the petitioner (her current husband) were already married.

Counsel contends that the applicant did not commit fraud or willful misrepresentation in relation to the couple's Petition for Alien Fiancé(e) (Form I-129F). Counsel explains that the applicant and her current husband met in India soon after the death of the third wife of the applicant's husband. *See* Attachment to Form I-290B, dated August 15, 2002. Counsel indicates that after the applicant and her parents agreed to the marriage, the applicant's husband returned to the United States and filed the Form I-129F petition. *Id.* After waiting ten months without receiving approval, the applicant and her husband decided to marry in India on December 11, 2000. *Id.* An investigation by the United States Embassy in New Delhi, India determined that the applicant and her husband were married prior to December 11, 2000 and therefore, had committed fraud in attempting to secure an approval on the Form I-129F petition. *See* I-129F Petition Returned for Reconsideration Memorandum, dated January 24, 2001.

The AAO notes that the record does not support the finding that the applicant and her spouse were married prior to December 11, 2000. Based on the record, the embassy's conclusion is premised solely on the statements of unidentified individuals in the applicant's village. *Id.* There is no further substantiation or documentation offered for the assertion that the applicant committed fraud or willful misrepresentation in conjunction with the applicant's Form I-129F petition. Further, the record reveals that the couple's marriage could only have occurred as claimed because the applicant's husband was present in India in January 2000 and not again until December 2000. It is unlikely that the applicant and her husband wed within days of their initial meeting and the assertion is without support in the record beyond the statements of unidentified villagers. Further, the applicant's husband previously applied for and was granted a Form I-129F petition on behalf of his third wife. *See* Form I-129F Petition (WAC-00-108-53513), submitted March 2, 2000. The record fails to establish a motive for fraud or willful misrepresentation in a petition that would likely be, and initially was, approved and where the petitioner completed the same process with success in the past.

A clear reading of the law reveals that the applicant is not inadmissible. She, therefore, does not need a waiver of inadmissibility, so the appeal will be dismissed, the decision of the OIC will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the officer in charge is withdrawn and the application for waiver of inadmissibility is declared moot.