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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: APR 05 2004

IN RE: [redacted]

PETITION: 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 PETITIONER: SELF-REPRESENTED

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 The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn and the application will be declared moot.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 procure a visa for admission into the United States by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on November 30, 2000 in India. The applicant is the beneficiary of an approved Petition for Alien Relative (WAC-01-075-53385). The applicant 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 May 7, 2003.

On appeal, the applicant states that the allegations of fraudulent documents submitted regarding the death of her first husband are not true. The applicant further contends that the information gathered by a consular officer on a field trip to the applicant's village is speculative and presumptive. *See* Form I-290B, undated.

In support of these assertions, the applicant submits a statement entitled Attachment to Form I-290B, undated; copies of the Indian passports issued to [redacted] on July 17, 1986 and March 27, 1998; a copy of the Indian passport issued to [redacted] on September 10, 1986; copies of photographs of [redacted] copies of photographs of the dead body of [redacted]; a copy of a court order addressing the transfer of land to [redacted] and [redacted] from their aunts; copies of photographs of [redacted] and [redacted] together and photographs of the marriage of [redacted] to [redacted] on April 3, 1987. 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 reveals that, on September 7, 2000, the applicant applied for a visa based on an approved Petition for Alien Fiancé(e) (Form I-129F) at the Embassy of the United States in New Delhi, India. The applicant is the beneficiary of the petition and the petitioner is Based on a field investigation prompted by the filing of the Form I-129F, a consular officer determined that the applicant was already married to the petitioner. Although the beneficiary contends that her first husband died and the petitioner is his brother, the consular officer concluded that the applicant's first husband and the petitioner are the same person. The consular officer determined that did not die as maintained by the applicant, but instead is living in the United States as Therefore, the consular officer found that the applicant attempted to procure a visa for admission into the United States by fraud or willful misrepresentation pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, the applicant submits extensive evidence indicating that her current spouse in not the same person as her first spouse and that her first spouse is, in fact, deceased. The AAO finds that since the applicant's current spouse and her former spouse are two separate individuals, the applicant did not attempt to procure a visa by fraud or willful misrepresentation as contended and the Form I-601 waiver application will be declared moot.

ORDER: The appeal is dismissed, the previous decision of the officer in charge is withdrawn and the application is declared moot.