U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: MAR 30 2009

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.

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Harlingen, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision is withdrawn and the matter remanded to the district director for further action consistent with this decision.

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). The applicant is the daughter of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that the refusal of her admission into the United States would result in extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated February 28, 2006.

On appeal, counsel asserts that he is including sufficient evidence on appeal to show that the refusal of the applicant's admission would result in extreme hardship to the applicant's U.S. citizen spouse. *Attachment to Form I-290B,* undated. The AAO notes the record includes no documentation that the applicant has a U.S. citizen spouse, but rather her qualifying relative is her lawful permanent resident father.

The AAO finds that nowhere in the current record is there an indication of the specific nature of the applicant's misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the elements of material misrepresentation are defined as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
>
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

Again, the record does not indicate the specific nature of the misrepresentation made by the applicant. Without this information the AAO is unable to properly determine the necessity of the applicant's waiver application and the discretionary factors involved in the applicant's case.

Furthermore, 8 C.F.R. §103.2(16) states, in pertinent part, that:

> (16) Inspection of evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.
>
> > (i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

8 C.F.R. §103.3(a)(1)(i) states, in pertinent part, that:

> Denial of application or petition. When a Service officer denies an application or petition filed under Sec. 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I-292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I-292 constitutes the denial order.

The AAO finds that the record does not indicate that, in accordance with 8 C.F.R. §103.2 and 8 C.F.R. §103.3, the applicant was notified of the specific nature of the misrepresentation that renders her inadmissible.

Absent evidence of the specific nature of the applicant's misrepresentation and in the absence of an indication that the applicant was notified of the specific nature of the misrepresentation she is alleged to have made, the AAO finds it necessary to remand the present matter to the director for a new Form I-601 decision to be issued notifying the applicant of the specific nature of her misrepresentation. Upon review, if the district director finds that the applicant has not made a material misrepresentation and is not inadmissible, the waiver application shall be declared moot. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The district director's decision is withdrawn and the matter remanded to the district director for further action consistent with the present decision.