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

U.S. Citizenship and Immigration Services

#5

[redacted]

DATE: SEP 09 2011 OFFICE: BALTIMORE DISTRICT OFFICE 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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew for
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of Cameroon 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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). Through Counsel, the applicant contests this finding of inadmissibility, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. relative.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of District Director, Baltimore, Maryland*, dated May 11, 2009.

On appeal, counsel asserted that United States Citizenship and Immigration Services (USCIS) has not considered and properly reviewed all evidence submitted by the applicant, including country conditions information, that establishes extreme hardship to the applicant's spouse; has not given proper weight to the extreme hardship that the applicant's spouse would experience if the applicant were to depart from the United States; has made a cursory decision by reviewing only three of the seven hardships identified by the applicant's spouse; has made a decision that contains factual errors; and has made unsubstantiated statements and has not provided any evidence of fraud; and thereby, has failed to meet its burden of proof. Notice of Appeal or Motion (Form I-290B), received June 11, 2009.

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); two Applications to Register Permanent Residence or Adjust Status (Form I-485); two Petitions for Alien Relative (Form I-130); two briefs from counsel; a letter of support from the applicant; a letter of support from the applicant's husband; a letter from a Licensed Professional Counselor; medical letters; letters of support from family members and friends; employment letters; copies of earnings statements; a copy of the applicant's spouse's naturalization certificate; copies of marriage certificates; copies of divorce decrees; a copy of a child support order; copies of birth certificates; a copy of the applicant's passport; copies of financial statements; copies of tax records and W-2s; and country conditions information. 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.

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir., 1995).

The record establishes that the applicant initially was inspected and admitted into the United States by U.S. immigration officials in Boston, Massachusetts on or about February 17, 1984 as an F-1 for Duration of Status. Subsequently, the applicant affirmatively filed a Request for Asylum in the United States (Form I-589) on or about March 5, 1993. The Arlington Asylum Office issued a Notice of Intent to Deny and ultimately denied the applicant's affirmative asylum application on or about July 29, 1993.

The record also establishes that the applicant was last inspected by U.S. immigration officials in Washington, D.C. on or about October 11, 1996, and paroled indefinitely into the United States pursuant to an adjustment of status application that the applicant filed jointly with a Petition for Alien Relative (Form I-130) on or about October 4, 1995, as the spouse of a native-born U.S. citizen. The record indicates that the applicant has resided in the United States since on or about October 11, 1996, and attended her adjustment of status interview on or about May 21, 1997. The record indicates that the applicant was divorced from her native-born U.S. citizen spouse on or about September 6, 2000, and that USCIS denied the request for adjustment of status on or about September 12, 2008.

Additionally, the record establishes that the applicant also filed another adjustment of status application on or about September 26, 2007 as the beneficiary of a Petition for Alien Relative (Form I-130), approved on or about September 12, 2008, as the spouse of a naturalized U.S. citizen. The record indicates that the applicant attended an adjustment of status interview on or about April 15, 2008. USCIS issued a Notice of Intent to Deny and ultimately denied the applicant's request for adjustment of status on or about May 4, 2009, determining that the applicant previously provided false testimony and documents at her May 21, 1997 adjustment interview concerning her actual relationship to three children she claimed to be her biological children in addition to having one other biological child.

Counsel states that the applicant "has consistently asserted that she never said that the three children were her biological children, and that she was never in possession of the birth certificates of the children." *I-290B Brief in Support of Appeal*, received July 10, 2009. Counsel further contends that when submitting immigration applications and petitions, the applicant has

consistently indicated only one child as her biological child. *Id.* In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration Services) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

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

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The record establishes that the applicant indicated on her initial Application to Register Permanent Residence or Adjust Status (Form I-485), that she had one biological child. During the adjustment of status interview, the applicant testified that she had four biological children, all of whom were applying with her as her beneficiaries. In support of her oral testimony and at the request of USCIS, the applicant subsequently submitted three birth certificates that identified her as the biological mother to three of the four alleged children. *See Copy of Birth Certificate for* [redacted] see also *Copy of Birth Certificate for* [redacted]; *Copy of Birth Certificate for* [redacted] The applicant later indicated that her only biological child was [redacted] and that the three other individuals actually were her then dying sister's children who she agreed to adopt and for whom she started adoption proceedings in Cameroon with the consent of the children's father. *See I-290B Brief in Support of Appeal*, *supra*; *see also Letter of Support from* [redacted] dated October 23, 2008. The applicant also indicated that the three other children's father subsequently decided to keep the children, and the applicant terminated the adoption process. *Id.*

Based on the record, the AAO finds that the applicant has consistently asserted that [redacted] is her biological child. Accordingly, the maternal parentage of [redacted] is not at issue in the present case. Based on the record, the AAO also finds that during her initial adjustment interview, the applicant misrepresented her actual relationship to three of four individuals whom the applicant testified were her biological children. And, the applicant continued to misrepresent her actual relationship by presenting at the request of USCIS three birth certificates that incorrectly identified the applicant as the biological mother to three of the four children. However, the applicant's misrepresentations are not material given that the true facts, i.e., that the applicant has only one biological child, and not three, does not render the applicant inadmissible to the United States. Additionally, the applicant's misrepresentations did not shut off a line of inquiry that was relevant

to her eligibility and that might well have resulted in a proper determination that she be found inadmissible.

Accordingly, the AAO finds that the applicant did not misrepresent a material fact and is not inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible and the director's findings regarding misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i). Here, the applicant is not required to file for a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the waiver application is moot.

The AAO notes that the District Director denied the Form I-485, application to adjust status, solely on the basis of the applicant's inadmissibility under section 212(a)(6)(C) of the Act. *Decision of District Director, Baltimore, Maryland, supra.* Because the AAO finds that the applicant is not inadmissible and the appeal will be dismissed as moot, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the District Director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.