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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: DEC 0 5 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago, who was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(C)(i), for attempting to procure lawful permanent resident status by fraud or willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130), and she seeks a waiver of her ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

In a decision dated October 27, 2011, the director determined the applicant had failed to establish she had a qualifying relative for waiver of inadmissibility purposes. The waiver application was denied accordingly.

The applicant indicates on appeal that a preparer completed her previous adjustment of status application; she was unaware that false information and birth certificate documentation were submitted on her behalf; and she did not willfully submit fraudulent documentation or misrepresent material information in violation of section 212(a)(6)(C) of the Act. Alternatively, she asserts that she, her husband, and her children will experience extreme hardship if she is denied admission into the United States. In support of her assertions, the applicant submits letters written by her husband, children, mother and herself; medical and financial documentation; citizenship and identity documentation for their children; and country-conditions information. The entire record was reviewed and considered in rendering a decision on the appeal. [1]

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.

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[1] The appeal indicates that [redacted] assisted the applicant in filing the instant appeal. Under 8 C.F.R. § 103.2(a)(3), an applicant may be represented by an accredited representative as defined in 8 C.F.R. §292.1(a)(4). 8 C.F.R. § 292.1(a)(4) defines an accredited representative as a person recognized as representing an organization that has been accredited by the Board of Immigration Appeals (BIA). According to the most recent Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration and Review, available on the Internet at http:// www.usdoj.gov/eoir/statspub/raroster.htm., [redacted] is not an accredited representative and [redacted] is not an accredited organization recognized by the BIA. The appeal shall therefore be treated as a self-represented appeal.

A misrepresentation must be deliberate and voluntary; however, proof of intent to deceive is not required, and knowledge of the falsity of a representation is sufficient. *See Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir. 1977). An act is done willfully if it is done intentionally and deliberately and if it is not "the result of innocent mistake, negligence or inadvertence." *Emokah v. Mukasey*, 523 F.3d 110, 116-117 (2nd Cir. 2008).

The record contains a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) filed by the applicant on March 4, 2002, which falsely states she is the mother of U.S. citizen daughter, [redacted] The record also contains a New York State birth certificate for [redacted] submitted in support of the applicant's claim, that was determined to be fraudulent. In addition, the record contains a Form I-130 filed on the applicant's behalf on August 10, 2001, falsely claiming that the applicant is the mother of U.S. citizen [redacted] The Form I-130 was revoked on February 15, 2005, based on the submission of a fraudulent birth certificate and a false claim that the applicant wa[redacted] mother.

The applicant submitted no evidence to demonstrate that a representative completed her immigration applications or petitions submitted on her behalf, or to establish that she was unaware of misrepresentations and fraudulent documentation submitted in conjunction with her Form I-130 filed in 2001, and her Form I-485 adjustment of status application filed in 2002. It is further noted that the Form I-130 and Form I-485 specifically request the name and contact information of preparers. No preparer information was provided, and the record reflects the applicant signed the Form I-485 listing [redacted] as her daughter under penalty of perjury. There is no evidence that the applicant was unaware of the contents of the application that she signed. Moreover, the record reflects the applicant was familiar with Form I-485 adjustment of status applications, as she filed and signed a previous I-485 in May 1997, which correctly listed information regarding her children, and was denied.[2]

The burden of proof remains with the alien to show by a preponderance of the evidence that a willful material misrepresentation was not committed and that she or he is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. §1361. *See also, Matter of Arthur,* 16 I&N Dec. 558 (BIA 1978). In the present matter, the applicant failed to meet her burden of proof, and the AAO concludes that the evidence in the record establishes the applicant's misrepresentation was willful in nature. The AAO finds further that the applicant's misrepresentation was material, in that it would have served as the basis of her eligibility to adjust status to that of a U.S. lawful permanent resident. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> (1) The [Secretary] may, in the discretion of the [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

[2] The record includes another Form I-485 denied on October 27, 2011, and a motion to reopen and reconsider the denial, but it does not include evidence that the California Service Center has adjudicated the motion.

> lawfully admitted for permanent residence, if it is established to the satisfaction of the [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The applicant indicates that she has U.S. citizen children. She does not, however, claim that her husband or parents are U.S. citizens or lawful permanent residents, and the record contains no evidence to establish such facts. Under section 212(i) of the Act, a waiver of inadmissibility is available only where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Because the applicant does not have a qualifying relative, she is ineligible for a section 212(i) waiver of inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.