identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JUL 27 2012 OFFICE: SALT LAKE CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Salt Lake City, Utah, and is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn and the appeal will be dismissed as no purpose would be served due to the fact that the applicant is not inadmissible under the stated provision of the Act.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States 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 a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

On May 3, 2012, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant states that the Field Office Director erred in denying the application for a waiver of inadmissibility.

In support of the waiver application, the record includes, but is not limited to briefs by counsel for the applicant, a statement from the applicant's spouse, statements from the applicant, a psychological evaluation of the applicant's spouse, letters from family and friends of the applicant and her spouse, biographical information for the applicant and his spouse, financial documentation for the applicant and her spouse, and documentation of the applicant's immigration history in the United States.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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 Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act as a result of fraud or misrepresentation in connection with a birth certificate that was submitted on the applicant's behalf in support of a Petition for Alien Relative (Form I-130) filed on her behalf by her brother, and later, again filed in connection with her Petition for Alien Relative (Form I-130) and Application for Adjustment of Status (Form I-485) filed based on her marriage to a U.S. citizen. The Field Office Director also stated that the applicant submitted the altered/fraudulent birth certificate when applying for a Mexican passport.

The birth certificate in question stated that the applicant was born on June 12, 1968, when the applicant's true and correct date of birth is June 12, 1969. The record does not indicate that any additional information on the birth certificate in question was incorrect. The AAO notes that the applicant was placed into removal proceedings on September 29, 2011; with one of the charges being a violation of section 212(a)(6)(C)(i) of the Act.

The Board of Immigration Appeals (Board or BIA) held that the term "fraud" in the Act "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). A misrepresentation is generally material only if by making it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for 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 have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

In this case, what was material to the approval of the Form I-130 Petition for Alien Relative filed on the applicant's behalf by her U.S. citizen brother was the nature of the qualifying relationship. *See Matter of Garner*, 15 I&N Dec. 215 (BIA 1975). The age of the beneficiary was not material to the applicant's eligibility for the immigration benefit, as only the petitioner's age is material under section 203(a)(4) of the Act, which states in pertinent part, that:

> (4) Brothers and sisters of citizens
> Qualified immigrants, who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000...

Moreover, in regards to the applicant's Form I-130 Petition for Alien Relative and Form I-485 Application to Register Permanent Residence or Adjust Status submitted in connection to her marriage to a U.S. citizen, the applicant's age or date of birth, was not material to her eligibility for the benefit sought. What was material were the bona fides of the qualifying marriage and the applicant's eligibility for adjustment of status pursuant to section 245(i) of the Act. *See e.g. Matter of Boromand,* 17 I&N Dec. 450 (BIA 1980). There is no evidence in the record to suggest

that the applicant's use of an altered/fraudulent birth certificate that showed her to be one year older than she was/is in reality, shut off a line of inquiry relevant to her eligibility for adjustment of status under section 245(i) of the Act based on her marriage to a U.S. citizen. Because the record indicates that the applicant's visa petitions and her application for adjustment of status were approvable on the true facts, the AAO concludes that the applicant's alleged use of a fraudulent birth certificate and her misrepresentation of her year of birth were not material. Consequently, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, there is no purpose served in adjudicating Form I-601. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether she has established extreme hardship to her U.S. citizen spouse. Accordingly, the appeal will be dismissed as the applicant is not inadmissible.

ORDER: The appeal is dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and does not require a waiver of inadmissibility.