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

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: NOV 0 6 2012 Office: LOS ANGELES FILE [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary. The matter will be returned to the field office director for continued processing.

The record establishes that the applicant is a native and citizen of Turkey 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 procured a visa and admission to the United States by fraud or willful 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.

The field office director 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated April 22, 2011.

On appeal counsel for the applicant asserts the applicant had not lied to the consular officer nor had she admitted to having lied. Counsel further contends that the applicant applied for a visitor visa so she could accompany her daughter to visit the paternal grandparents, thus it is not material whether the paternal grandparents were the parents or the applicant's ex-husband or her daughter's biological father.

In support of the appeal, the applicant submits the following: a brief from counsel; country information about Turkey; declarations from the applicant's spouse, the father of the applicant's spouse, and the applicant's daughter; school records for the applicant's daughter; tax returns for the applicant's spouse; and the birth certificate of the applicant's daughter. The record also contains previously-submitted declarations from the applicant and her spouse; the applicant's taxes; letters from the teachers and grandparents of the applicant's daughter; and a report from licensed clinical social worker with an evaluation of applicant, spouse and daughter and spouse's son. The entire record was reviewed and considered in rendering this decision.

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 immigrant 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...

With respect to the finding of inadmissibility under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant gained lawful permanent residence through marriage to a United States citizen spouse in 1998. She subsequently divorced and returned to Turkey with her daughter in 2000. In 2003 the applicant forfeited her lawful permanent residence to apply for a B2 visitor visa so her daughter could visit her paternal grandparents. The applicant visited the United States in 2003, returning to Turkey. The applicant again visited the United States in 2006 with the same visa, but did not depart. Notes on Form *I-407, Abandonment of Lawful* Permanent Residence Status, states the applicant intended to "visit with paternal grandparents, ex-husband's family." In 2009 the applicant's current spouse, the biological father of her daughter, filed an I-130 Petition for Alien Relative, which was approved in 2010. At the applicant's interview to adjust status it was determined the applicant had willfully misrepresented her intention to visit the United States as the paternal grandparents were not her ex-husband's parents, but rather the parents of the child's biological father, to whom the applicant had not been married. In denying the Form I-485 Application to Register Permanent Residence or Adjust Status, the field office director determined the applicant had made false statements about the purpose of her visits in order to obtain a visitor's visa. In denying the I-601 Application for Waiver of Grounds of Inadmissibility, the director determined the applicant had stated that she had lied to the consulate officer about the purpose of her visit to the United States in order to obtain a visitor visa.

Based on information from the applicant's Form 407 Abandonment of Lawful Permanent Residence, it was determined that the applicant was inadmissible 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 immigrant benefits by fraud or willful misrepresentation.

Counsel contends in his brief that the Service had not presented evidence the applicant had lied or that a misrepresentation was material. Counsel notes the information on the applicant's form abandoning her lawful residence is accurate as the applicant was seeking a visit to take her daughter to visit her paternal grandparents. Counsel contends the applicant had submitted additional information that the consular officer used to grant the visa application and that no further investigation would have found a statutory ineligibility or other problem leading to a denial. Counsel goes on to assert that misrepresentation in this case was not material even if willful, as it was done out of embarrassment, noting the applicant's statement she ashamed to say her daughter was born to a man other than her husband.

On appeal the applicant states that when she applied for the visa she presented her own permanent resident card, carrying the surname of her ex-husband, and her daughter's U.S. passport and birth certificate, both of which contained the surname of her daughter's father, not the applicant's ex-husband. The applicant asserts she did not lie to the consulate official and that her intention was for her daughter to visit her grandparents, which she did in 2003 and again in 2006.

The AAO notes that at her adjustment interview the applicant wrote in sworn statement, "When I applied for my visa I explained that I wanted my daughter to visit her grandparents in the USA. I did not intend to state that these were my ex-husband's parents. This was an inadvertent error, and I apologize." On her I-601 application the applicant indicated that she had told the consular officer she was bringing her daughter to see her paternal grandparents, adding "I was fearful and ashamed to say that my daughter was born of a different man than the man I was married to."

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States,* 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In the present case the record is not clear that the applicant misrepresented whether the paternal grandparents were the parents of her ex-husband or her daughter's father. The applicant admits there was an error and infers that she did not clarify that error, but the record does not show that the applicant lied or intentionally misled the consular officer to secure a visa. Additionally, the applicant had presented her lawful permanent residence card along with her daughter's passport and birth certificate, indicating the applicant and her daughter were using differing surnames. The birth certificate also lists the applicant's current husband rather than her ex-husband as the daughter's father.

Further, the AAO finds that had the applicant misrepresented the parties whom she intended to visit, this was not a material misrepresentation. The fact that she stated the child's grandparents were her ex-husband's parents, even if intentional, was not material as it did not shut off a line of inquiry. The consular officer would have been aware that the child's father was in the United States, and

granted the applicant a visa to visit the grandparents with the child. There is no indication that the applicant would not have been granted a visa had the consular officer known the grandparents she was visiting were not the parents of her ex-husband. Therefore this is not a material fact. Even by hiding this fact the applicant did not receive a benefit for which she was not eligible.

Thus, the AAO finds that the field office director erred in concluding that the applicant was *inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.* As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is unnecessary and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the instant application for a waiver is declared unnecessary.