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

[redacted]

H5

DATE: NOV 20 2012 Office: NEW YORK, NEW YORK [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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted, and appeal will be dismissed as the Form I-601 application will be deemed unnecessary.

The applicant is a native and citizen of Liberia. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts when entering the United States. He is married to a U.S. citizen, and has one U.S. citizen son. He seeks a waiver of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 26, 2008. The AAO found that the applicant's spouse would not experience extreme hardship and denied the appeal. *AAO Decision*, dated March 4, 2011.

On motion, counsel for the applicant asserts that the AAO was incorrect in concluding the applicant was inadmissible under section 212(a)(6)(C)(i) and that the AAO should have given more weight to the country conditions in Liberia when determining extreme hardship to the applicant's spouse. *Form I-290B*, received July 19, 2011.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel asserts on motion that the Chief, AAO, failed to consider relevant hardship factors in reaching its determination, and that the AAO has sustained other appeals where the country of origin for the applicant has been designated for Temporary Protected Status. Counsel has submitted additional evidence on motion, including copies of AAO decisions in other proceedings. Based on these assertions and the additional evidence submitted the AAO will reconsider the applicant's appeal.

The record contains documentation submitted with the initial waiver application and documentation submitted on appeal, including country conditions materials, tax returns and financial records and articles and background information on Liberia. On motion, counsel has submitted the following documents: a statement from counsel; copies of AAO decisions from other proceedings; country conditions materials on Liberia; and a copy of the Deferred Enforced Departure extension order for

Liberians, issued March 19, 2010. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant arrived at the United States J.F.K. International Airport on November 5, 1991, and he had in his possession a Liberian passport with a counterfeit U.S. visa. The record is unclear as to the point in the inspection process that the applicant admitted the falsity of his visa and requested asylum. The applicant was paroled into the United States and entered into a deferred inspection proceeding. Based on these facts, the District Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking admission by making a willful misrepresentation. The AAO affirmed this finding on appeal.

On motion, counsel asserts there is insufficient evidence to establish that the applicant committed fraud when entering the United States in 1991. Neither the District Director, nor the Chief, AAO, made any official finding of fraud. However, as noted above, both found that the applicant committed misrepresentation by presenting a passport with false information when attempting to enter the United States. In order to establish misrepresentation, it is not necessary to establish that there was an intent to deceive, or that an inspection officer or other official was deceived and acted upon the misrepresentation. *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

Counsel asserts that the applicant recanted his testimony and entered the United States in 1991 in order to seek asylum. Under the doctrine of timely retraction or recantation an applicant can recant his misrepresentation and not become inadmissible under section 212(a)(6)(C)(i) of the Act. The effect of a timely retraction is that the misrepresentation is eliminated. *Matter of R-R-*, 3 I&N 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). In order for an alien to recant a misrepresentation the retraction must be voluntary and without delay. *Matter of R-R-*, 3 I&N 823 (BIA 1949). An alien must correct his or her misrepresentation before being exposed by a government official. *Ramos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949); *see also Ymeri v. Ashcroft*, 387 F.3d 12 (1st Cir. 2004)(finding that admitting a misrepresentation after presenting a passport and being confronted by an inspection officer was misrepresentation under the Act). If an alien withdraws or admits his misrepresentation of his own volition and without delay, and during the same hearing or examination under oath, it may be found that there was no intent to deceive. *Matter of Namio*, 14 I&N 412 (BIA 1973).

The record contains a copy of the Form I-546, Order to Appear for Deferred Inspection, dated November 5, 1991, and a copy of Form I-215W, Record of Sworn Statement in Affidavit Form, dated November 5, 1991. Both of these documents indicate that the applicant admitted to the falsity

of a non-immigrant visa in his passport and that he had entered the United States in order to seek asylum. Neither inspector indicated that the applicant had been confronted with the falsity of his passport prior to his recantation, and neither inspector entered a finding of fraud or misrepresentation. The applicant was, in fact, entered into deferred inspection for the purpose of entering his asylum application and paroled into the United States for the purposes of seeking asylum.

The burden to establish eligibility in this proceeding rests with the applicant, section 291 of the Act, 8 U.S.C. § 1361, however, there must be some evidentiary basis for a United States Citizenship and Immigration Services (USCIS) conclusion that an alien is inadmissible under section 212(a)(6)(C)(i) of the Act. *See Elias-Zacarias* 502 U.S. 478 (1992)(discussing burden of proof). In this case the record does not make clear that the applicant was found to have misrepresented himself when he arrived in the United States on November 5, 1991, by the immigration inspector. The record does not contain evidence that he was confronted about his passport prior to his admission. The immigration inspector took a sworn statement from the applicant, primarily regarding his fear of persecution in Liberia, then paroled the applicant into the United States and entered him into a deferred inspection proceeding. Although the applicant's asylum application was ultimately denied, he was not found to have committed a material misrepresentation at the time of his entry. The record lacks sufficient evidence to support a finding after-the-fact that he committed a misrepresentation. Accordingly, the AAO cannot reach a conclusion that he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

As the AAO does not find the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, the waiver application is unnecessary and the appeal will be dismissed.

ORDER: The Motion to Reconsider is granted, and the appeal is dismissed as the Form I-601 application for a waiver is deemed unnecessary.