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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 3 1 2013 Office: ACCRA, GHANA FILE:

IN RE:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the record does not establish that the applicant is 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), and the relevant waiver application is therefore unnecessary.

The applicant is a citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having sought admission to the United States through fraud or misrepresentation. The applicant is the mother of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility in order to reside in the United States with her son.

The director concluded that the applicant had failed to establish that she has a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated February 28, 2012.

On appeal, the applicant contests her inadmissibility and states that both her passports are valid. She states that her first passport was issued with her birth year as it was recorded in the national birth registry, though it was incorrect because of her mother's mistake. She states that she was able to officially change her birth year with a court order. *See Form I-290B, Notice of Appeal or Motion*, dated March 20, 2012.

The evidence of record includes, but is not limited to: statements from the applicant, a photograph, and identification documents. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

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 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* 495 U.S. at 771-72. The Board of Immigration Appeals (Board) 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 the present case, the record indicates that in 2006 the applicant applied for a non-immigrant visa with a passport showing her date of birth as June 22, 1948. The applicant's visa was denied and the record does not indicate the denial reasons. In 2011, the applicant applied for an immigrant visa with a passport indicating her date of birth as June 22, 1952. The applicant states that her mother mistakenly had registered her under a wrong birth year and government officials would not issue a passport to her with her correct birth year until she corrected her birth registry. She decided to present the passport with the wrong birth year in 2006, because she did not want to delay her travels. The applicant states that subsequently she presented evidence of her correct birth year and obtained a court order to have it officially corrected. A consular officer's note states that the applicant provided a document from a local government official stating that 1952 is her correct birth year. The field office director found the applicant inadmissible under 212(a)(6)(C)(i) of the Act for knowingly presenting a document with a wrong birthdate to obtain a non-immigrant visa.

The record establishes that the applicant's misrepresentation was willful, because she knowingly presented a passport with a wrong birth year to a consular officer. However, willfulness alone does not establish inadmissibility. The misrepresentation also must be material.

According to the Board, the relevant materiality test is "whether the government authorities have had adequate opportunity, once the misrepresentation became known, to conduct the kind of investigation which would have been conducted had there been no misrepresentation." *Matter of S- and B-C-*, 9 I&N Dec. 436 at 436. The AAO notes that the only inconsistency in the applicant's identity is her birth year. A consular officer could have conducted the appropriate investigation and become aware of her previous non-immigrant visa application through an independent search of agency systems under the applicant's name. Evidence in the record shows that both of her passports were available to the consular officer for examination; therefore, a relevant line of inquiry that might have resulted in her exclusion was not shut off. The AAO also observes that the Form I-130 filed on her behalf in 2010 indicates her correct birth year. Furthermore, no evidence in the record demonstrates that the applicant's non-immigrant visa denial was based on other inadmissibility grounds under the Act; therefore, she would not have been excludable on true facts.

The record does not support finding that the applicant committed fraud or misrepresented a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. Based on the foregoing, the applicant's misrepresentation was not material within the meaning of section 212(a)(6)(C) of the Act, and she is therefore not

inadmissible under section 212(a)(6)(C) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has shown that she is not inadmissible and therefore not required to file the waiver application. Accordingly, the appeal will be dismissed as unnecessary.

ORDER: The appeal is dismissed because the applicant is not inadmissible and a waiver is unnecessary.