

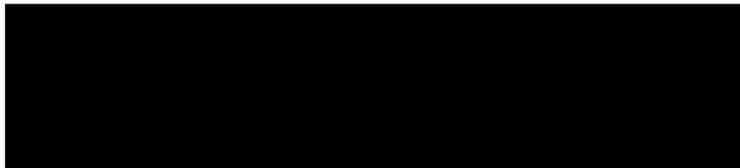
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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FILE:

Office: BALTIMORE, MD

Date:

APR 01 2009

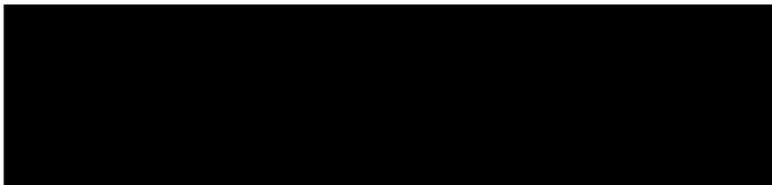
IN RE:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "John H. Grissom".

John H. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Zambia 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 sought admission to the United States by fraud or willful misrepresentation. The applicant is the stepmother of a U.S. citizen and seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her.

The district director denied the Form I-601, Application for Waiver of Ground of Excludability, on finding that the applicant had failed to establish that her stepdaughter would suffer hardship beyond that normally experienced as a result of the removal of a family member. *Decision of the District Director*, dated July 20, 2006.

On appeal, counsel asserts that the facts do not support the United States Citizenship and Immigration Services (USCIS) finding that the applicant attempted to enter the United States by fraud or willful misrepresentation. Therefore, counsel contends, USCIS erred in requiring the applicant to file a Form I-601. Counsel also contends that the evidence of hardship to the applicant's stepdaughter would merit approval of the Form I-601 if she were actually required to file it. *Counsel's Letter Brief*, dated August 17, 2006.

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 alien 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.

The record indicates that USCIS found the applicant inadmissible under section 212(a)(6)(C)(i) for submitting an altered document in support of an earlier Form I-485, Petition to Register Permanent Resident or Adjust Status. That document is a June 6, 2002 letter from the Lusaka City Council, Office of Director of Administration, Lusaka, Zambia regarding the date and location of the applicant's birth, in which the original typewritten statement of the applicant's date of birth as "3rd May 1970" has been overwritten to read "3rd March 1950." Subsequent letters from the Lusaka City Council, Town Clerk, dated May 20, 2003, and from the Lusaka City Council, Office of the Director of Administration, dated April 13, 2005 and January 6, 2006, state that the applicant was born in Zambia on March 5, 1950, as she claims. It is also noted that the March 5, 1950 birth date appears on the applicant's Zambian passport, issued in 1999, and National Identification Card, issued in 1966. Moreover, this same date of birth is found on the Forms I-485 and G-325A, Biographic Information, submitted by the applicant prior to her adjustment interview. On this basis, the AAO finds the district director to have erred in finding that the applicant's presentation of the amended June 6, 2002 letter from Lusaka City Council constituted fraud or willful misrepresentation and so required the filing of a Form I-601.

Further, the AAO notes that a misrepresentation must be material in order to trigger inadmissibility under section 212(a)(6)(C)(i) of the Act. As stated in *Matter of S- and B- C-*, 9 I&N Dec. at 448-449, a misrepresentation in connection with an application for a benefit under the Act 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 or she be excluded. Applying this standard, the AAO finds no evidence that the variance between the typed and handwritten dates of birth on the initial letter from the Lusaka City Council or between the day-of-the-month information in that letter and the other documents listing the applicant's birth is material to the applicant's Form I-485.

As the record does not establish that the applicant engaged in fraud or willful misrepresentation of a material fact, she is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and is not required to submit the Form I-601. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.