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



U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2009

IN RE: [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:

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 black ink, appearing to read "John F. Grissom".

John F. Grissom,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal dismissed as the underlying waiver application is moot.

The applicant is a native and citizen of Liberia who has been 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the mother of five U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with her family.

The director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were excluded from the United States. She denied the application accordingly. *Decision of the Director*, dated April 3, 2007.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and, alternately, that the director failed to consider the applicant's five children in reaching her determination that the applicant had not established her claim to extreme hardship. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated April 18, 2007.

Section 212(a)(6)(C)(i) of the Act states 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 that:

- (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.

Prior to determining whether the record in the present case establishes the applicant's eligibility for a waiver under section 212(i) of the Act, the AAO will first consider the basis for the director's determination that she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The record establishes that the applicant submitted a fraudulent Liberian birth registration certificate in support of her Form I-485, Application to Register Permanent Residence or Adjust Status. On

appeal, counsel contends that the applicant did not intentionally or knowingly submit the fraudulent registration and that she has never admitted doing so. In affidavits, dated January 22, 2004 and March 5, 2007, the applicant attests that she obtained the fraudulent birth registration certificate innocently and believed it was a valid document at the time she submitted it to the legacy Immigration and Naturalization Services (now U.S. Citizenship and Immigration Services (USCIS)). A second genuine Liberian birth registration was submitted by the applicant in a motion to reopen/reconsider filed in 1998.

In considering whether the applicant's submission of a fraudulent document renders her inadmissible under section 212(a)(6)(C)(i) of the Act, the AAO notes that the Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect USCIS decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. 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 (AG 1961).

In the present matter, the AAO does not find the applicant's submission of a fraudulent birth registration certificate, whether or not intentional, to be a material misrepresentation. The applicant is not excludable based on the true facts. The AAO notes that the true facts of the applicant's birth were accurately recorded on the fraudulent birth registration. Neither did her presentation of a fraudulent birth registration shut off a line of inquiry relevant to her eligibility that could have resulted in her exclusion from the United States. Therefore, the applicant's submission of a fraudulent birth registration certificate is not a material misrepresentation for the purposes of section 212(a)(6)(C)(i) of the Act and the applicant is not inadmissible to the United States. As the applicant is not inadmissible, she is not required to file the Form I-601. Accordingly, the appeal will be dismissed as the underlying waiver application is moot.

**ORDER:** The decision of the district director is withdrawn. The appeal is dismissed as the underlying waiver application is moot.