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U. S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: BALTIMORE, MD

Date: JUL 02 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of  
the Immigration and Nationality Act (INA), 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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 The district director's decision will be withdrawn and the appeal will be dismissed as moot.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

The record reflects that the applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated December 31, 2007.

The applicant denies willfully misrepresenting a material fact in order to procure an immigration benefit and, therefore, contends she is not inadmissible. Alternatively, the applicant contends she has established extreme hardship to her U.S. citizen husband.

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

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 Act is inadmissible.

In this case, the record shows that the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) in April 1995. In support of the Form I-485 application, the applicant submitted her birth certificate from Ghana. On May 24, 1997, the Service issued a Notice of Intent to Deny the applicant's Form I-485 application because "[b]ased upon microscopic, instrumental, and comparative examination, the forensics experts have determined that the birth certificate has been altered." In response to the Notice of Intent to Deny, the applicant submitted an affidavit stating that she was born in [REDACTED], on June 10, 1945, she is the sister of [REDACTED] and that their parents are [REDACTED] and [REDACTED]. *Affidavit of Gina Adkins*, dated August 13, 1997. The applicant's brother and sister submitted similar affidavits attesting that the applicant was born on June 10, 1945, in [REDACTED], and that their parents are [REDACTED]. *Affidavit of [REDACTED]*, dated August 8, 1997; *Affidavit of Lilian Addy*, dated August 8, 1997. In addition, the applicant submitted another birth certificate from Ghana indicating she was born in [REDACTED], on June 10, 1945.

The record shows that the applicant's second submitted birth certificate was examined by a Forensic Document Analyst and found to be a genuine document without evidence of any alterations. See *Letter from Forensic Document Analyst*, dated August 28, 1998. The district director found that the submitted documents "do overcome the initial grounds of the intent to deny." However, the district director found that since the applicant initially submitted a fraudulent birth certificate, the applicant is inadmissible under section 212(a)(6)(C) of the Act. Consequently, the district director denied the Form I-485 application. *Decision of the District Director*, undated.

After the applicant's Form I-485 application was denied, she filed a Form I-601 waiver application. The applicant's counsel contended that the applicant never intended to deceive the Service and that no material fact had been misrepresented. In support of this contention, the applicant submitted an affidavit certifying under penalty of perjury that she had asked a friend to get a copy of her birth certificate and that she "had no idea that it was 'altered.'" The applicant states that after the INS rejected her birth certificate, she asked her sister to mail her a copy of her birth certificate. The applicant states that she "never knew that [the] first birth certificate was not what it was supposed to be" and that she "never intended to give a bad document to the INS." [REDACTED] dated February 12, 1999.

Upon review of the record, the AAO does not find the applicant's submission of a fraudulent birth certificate, whether or not intentional, to be a material misrepresentation. The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as "(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." 9 I&N Dec. 436, 447 (BIA 1960). Pursuant to the first part of this test, the applicant is not inadmissible 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. Further, the misrepresentation is not material under the second part of the test because the record does not show that her presentation of a fraudulent birth certificate shut off a line of inquiry relevant to her eligibility that could have resulted in her inadmissibility to the United States. A misrepresentation is generally material only if by 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). The applicant did not provide false information or conceal her identity, but rather, presented a false document containing her correct identifying information. Therefore, the applicant's submission of a fraudulent birth certificate is not a material misrepresentation that renders the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, the waiver application is moot and we need not reach the issue of whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.