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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

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FILE: [REDACTED] Office: ACCRA, GHANA Date: **JAN 26 2011**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Perry Rhew  
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 case is remanded to the Field Office Director for further action and consideration

The applicant is a native and citizen of Nigeria 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

In his decision, the Field Office Director notes that records show that the applicant has given several different names and two dates of birth to obtain a United States visa, specifically finding that on July 15, 2003 and March 11, 2004 the applicant stated his name was [REDACTED] with a date of birth of June 24, 1954 and on a Form I-130, Petition for Alien Relative filed on October 4, 2002, the applicant states his name was [REDACTED] with a date of birth of [REDACTED]. *Decision of the Field Office Director*, dated January 25, 2008. The Field Office Director also found that on the Form DS-230, Application for Immigrant Visa and Alien Registration the applicant stated his name was [REDACTED] and his date of birth was [REDACTED]. *Id.* On the Form I-601, Application for Waiver of Grounds of Inadmissibility the applicant listed his name to be [REDACTED] with a date of birth of [REDACTED]. *Form I-601.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. 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, the legacy Immigration and Naturalization Service’s (now 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).

The Board of Immigration Appeals (BIA) has also found that if the use of the false identity was for a legitimate reason and was for a prolonged period prior to entry, a line of relevant inquiry was not cut off. *Matter of Gilkevorkian*, 14 I&N Dec. 454, 455 (BIA 1973).

The AAO notes that the Field Office Director failed to analyze whether the different names and dates of birth the applicant provided were material. As such, the AAO remands the case back to the Field Office Director to determine whether the applicant's misrepresentations were material so as to make him inadmissible under section 212(a)(6)(C) of the Act.

Additionally, according to a Consular Memorandum included in the record, the applicant submitted fraudulent documents and gave a different date of birth in 1973. *Consular Memorandum, U.S. Consulate, Lagos, Nigeria*, dated November 6, 2007. The AAO notes that there is no documentation included in the record regarding the alleged 1973 misrepresentation. As such, the AAO also remands this case to the Field Office Director to provide documentation to support the Consular Memorandum regarding the alleged misrepresentation in 1973.

Upon analyzing whether the applicant's misrepresentations are material and upon providing documentation regarding the alleged misrepresentation in 1973, the Field Office Director shall issue a new decision on the Form I-601 waiver application. If the Field Office Director finds the applicant to be inadmissible to the United States and denies the Form I-601 waiver application, he shall certify his decision to the AAO for review. The AAO will then adjudicate the District Director's denial of the Form I-601 waiver application.

**ORDER:** The case is remanded to the Field Office Director, Accra, Ghana to determine whether the applicant's misrepresentations of his name and date of birth are material to make him inadmissible under section 212(a)(6)(C) of the Act and to provide documentation regarding the alleged misrepresentation in 1973. Upon analyzing whether the applicant's misrepresentations are material and upon providing documentation regarding the alleged misrepresentation in 1973, the Field Office Director shall issue a new decision on the Form I-601 waiver application. If the Field Office Director finds the applicant to be inadmissible to the United States and denies the Form I-601 waiver application, he shall certify his decision to the AAO for review.