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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



PUBLIC COPY



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Date: **MAY 20 2011**

Office: MANILA, PHILIPPINES

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

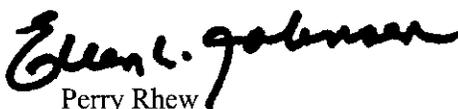
SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines 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 and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated January 27, 2009.

On appeal, the applicant contends that her misrepresentation was only in registering her adopted daughter as her biological daughter in order to prevent her daughter from the trauma of finding out that she is not the applicant's biological daughter. The applicant states she is willing to leave her daughter in the Philippines and asks that she be permitted to enter the United States without her daughter.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on May 24, 2006; a copy of a birth certificate for [REDACTED] indicating the applicant as her mother; an Affidavit for Delayed Registration of Birth signed by the applicant; a letter from the applicant; a letter from [REDACTED]; and an approved Petition for Alien Fiance (Form I-129F). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the

refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that she claimed that [REDACTED] was her biological daughter when, in fact, she is not. According to the applicant, she “consider[s] [REDACTED] to be [her] daughter [and has] raised her since she was [an] infant, when her biological mother abandoned her.” The applicant states she is going through the process of adopting [REDACTED] in order to be her legal guardian. She contends she obtained a birth certificate for [REDACTED] “unaware that it would not be a legal or useable document.” *Notice of Appeal of Motion (Form I-290B)*, dated February 26, 2009; *Form I-601 Supplemental Questionnaire*, dated July 24, 2008.

Despite the applicant’s concession that she misrepresented her relationship to [REDACTED] the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), because the misrepresentation was not “material.” According to the Department of State’s Foreign Affairs Manual, a misrepresentation 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 that is relevant to the alien’s eligibility and that might well have resulted in a proper determination that he be excluded. *See 9 FAM 40.63 N61*. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759, 772 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 410 (BIA 1962; AG 1964).

In this case, there is no indication that whether or not the applicant had a child would have rendered her excludable on the true facts, or shut off a line of inquiry that might have resulted in her exclusion. The applicant did not receive any benefit for which she would not otherwise have been eligible. Therefore, the applicant’s misrepresentation is not material. Significantly, the Board of Immigration Appeals has held that an alien’s submission of fraudulent birth certificates for his children to enter the United States did not render the alien inadmissible for fraud because the misrepresentation was not made on behalf of the applicant’s *own* admission to the United States. *Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954). Similarly, in this case, the applicant submitted a fraudulent birth certificate for [REDACTED] and made false statements claiming to be her mother in order to facilitate [REDACTED] admission into the United States. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Nonetheless, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). The AAO finds the applicant is inadmissible under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). Section 212(a)(6)(E) of the Act provides:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .
- (iii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The AAO finds that the applicant knowingly and willfully aided and abetted an alien, [REDACTED], in an attempt to enter the United States in violation of law. The applicant's contention that she was unaware that [REDACTED]'s birth certificate was not legal, and that she did not intend to deceive the U.S. embassy, is unpersuasive. The record contains a copy of [REDACTED] purported birth certificate which lists the applicant as the mother. In addition, the record contains a copy of an Affidavit for Delayed Registration of Birth, signed by the applicant, which states that "I am the mother of the said person," and that "[t]he reason for the delay in registering [the] birth was due to negligence." *Affidavit for Delayed Registration of Birth*, dated May 29, 2006. Furthermore, the record contains a copy of [REDACTED] Nonimmigrant Visa Application, prepared and signed by the applicant, which lists the applicant as her mother. By the applicant's own admission, she is neither [REDACTED] biological mother nor her adopted mother. The fact that the applicant is now willing to leave [REDACTED] in the Philippines rather than attempt to bring her to the United States does not change the fact that the applicant intentionally misrepresented her relationship to Alyssa Jane in order to facilitate [REDACTED] entry into the United States. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E), as an alien who has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien (1) only aided an individual who, at the time of the offense, was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart

the United States under an order of removal, or, is seeking admission as an eligible immigrant.

In the present case, the record does not show that the individual the applicant attempted to smuggle, [REDACTED] is a qualifying relative for purposes of a section 212(d)(11) of the Act waiver of inadmissibility. The AAO, therefore, finds that the applicant's inadmissibility under section 212(a)(6)(E) cannot be waived. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

ORDER: The appeal is dismissed.