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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**

H5

[REDACTED]

DATE: **SEP 22 2011**

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: Applicant: [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:

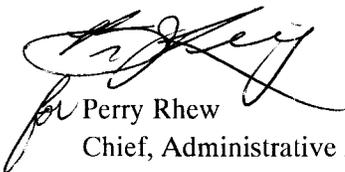
[REDACTED]

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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of Jamaica 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 having sought to procure a benefit under the Act by willfully misrepresenting a material fact. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 16, 2009.

On appeal, counsel asserts that the applicant is not subject to section 212(a)(6)(C)(i) of the Act and, alternatively that she has established extreme hardship to her U.S. citizen spouse. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record includes, but is not limited to, statements from the applicant's spouse describing the hardship claimed; a statement from the applicant; a medical statement relating to the applicant's spouse; various newspaper articles pertaining to conditions in Jamaica; tax returns, W-2 Wage and Tax Statements and earnings statements; and, counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on appeal.

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

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that the applicant entered the United States on June 10, 2001, with B-2 non-immigrant visa, with authorization to stay until December 9, 2001. On March 17, 2004, the applicant submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) and she obtained an Employment Authorization Document (EAD) as a result. On January 10, 2005, the Form I-485 was denied for abandonment under 8 C.F.R. § 103.2(b)(13). The applicant married her United States citizen spouse in Poughkeepsie, New York, on May 9, 2008. A Form I-130 was filed on behalf of the applicant on December 8, 2008, and the same day the applicant filed the current Form I-485. The Form I-130 was approved on May 15, 2009.

Counsel asserts that the applicant did not knowingly submit a fraudulent application to gain an immigration benefit in connection with her Form I-485 submitted in 2004. According to counsel, the applicant went to an immigration service provider's office in Brooklyn, New York, seeking to obtain a replacement of her Form I-94 card, she paid \$2,000.00 to a preparer, and she signed the Form I-485 application without being aware of its contents. According to counsel, the preparer defrauded the applicant who was deceived into paying the \$2,000.00 without knowing that she was filing a Form I-485 when she had no basis to do so. The applicant states that she simply signed the papers the preparer provided because she depended on the preparer's judgment. Counsel contends, therefore, that the applicant did not knowingly misrepresent a material fact to gain an immigration benefit and is not inadmissible under section 212(a)(6)(C)(i).

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); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The BIA has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to" the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

The AAO finds nothing in the record to establish that the applicant misrepresented a material fact to obtain an immigration benefit. The applicant signed a Form I-485 prepared by her agent. The applicant did not represent that she was eligible to adjust status and or was entitled to employment authorization. There is nothing in the record to justify the issuance of the EAD card.

In the present case, a review of the record reflects no indication that the applicant sought to obtain an immigration benefit by fraud or willful misrepresentation. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established

extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is sustained, the district director's decision is withdrawn and the waiver application declared moot. The director shall reopen and continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) accordingly.