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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5.

DATE: AUG 13 2012

Office: ROME, ITALY

FILE: [REDACTED]

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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Albania and citizen of Albania and Italy who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to procure admission by falsely claiming U.S. citizenship. The applicant's spouse is a U.S. citizen. 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 with her husband.

The Field Office Director found that the applicant was ineligible for a waiver of inadmissibility under 212(a)(6)(C)(ii) of the Act for falsely representing herself as a U.S. citizen. In addition, the Field Office Director found that the applicant did not demonstrate that her spouse would experience extreme hardship if her waiver of inadmissibility was denied. The application was denied accordingly. *See Decision of Field Office Director*, dated June 24, 2010.

On appeal, the applicant's attorney provided a Notice of Appeal or Motion (Form I-290B), brief, and additional documentation in support of the applicant's waiver application. In a statement accompanying the Form I-290B, the applicant's attorney contends that the applicant did not make a false claim of U.S. citizenship. He asserts that she stated "citizenship" in response to the question posed by a border officer regarding where she was born, and "citizenship" could apply to countries other than the United States. In addition, the applicant's attorney states in an appeal brief that the applicant does not read or understand English, and therefore, despite presenting an identification card and birth certificate belonging to a U.S. citizen, she did not make a false claim to U.S. citizenship.

USCIS records reflect that the applicant applied for admission to the United States on March 15, 2005, at the Detroit-Windsor Tunnel. The officer asked the applicant where she was born and she replied, "Citizenship." She presented a Michigan driver's license and birth certificate for a U.S. citizen. She was denied admission to the United States, processed for expedited removal, and removed on March 15, 2005.

As a result of her false claim to U.S. citizenship, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.¹

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

- (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

¹ The AAO will not address whether the applicant also is inadmissible pursuant to 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for making misrepresentations regarding her marital status to obtain a visa and for presenting a fraudulent Italian passport in 2004, because her admissibility under section 212(a)(6)(C)(ii) renders her ineligible to apply for a waiver.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (ii) Falsely claiming citizenship.—
 - (I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
 - (II) Exception.—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant's false claim to U.S. citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(iii).

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 record reflects that on March 15, 2005, the applicant applied for entry into the United States from Canada at the Detroit-Windsor Tunnel by presenting documents indicating that she is a U.S. citizen. The AAO notes that according to the applicant's sworn statement, which was taken with the assistance of an Albanian interpreter, the applicant responded "yes" when questioned whether she presented the identification card and birth certificate of a U.S. citizen for the purpose of entering the United States. *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated March 15, 2005 (Form I-867A); *Record of Deportable/Inadmissible Alien*, dated March 15, 2005 (Form I-213).

The applicant's attorney, on appeal, asserts that because the applicant did not speak or understand English, she had no knowledge of her false claim to U.S. citizenship, and "the element of

knowledge of a false claim is therefore not within a reasonable degree of probability.” The AAO is unaware of case law regarding a standard of “reasonable degree of probability” as an indicator of whether a false claim was made. Moreover, with respect to her knowledge regarding the falsity of her claim, the applicant presented the identification and birth certificate of a U.S. citizen to an immigration officer, and later, with the help of an interpreter, admitted that she knew the documents belonged to a U.S. citizen. As the applicant clearly understood that the identification card and birth certificate belonged to a U.S. citizen, she is responsible for her misrepresentation.

The AAO notes that the applicant initialed each question of her sworn statement to indicate that her answers were true and correct. The AAO acknowledges counsel’s assertion that the applicant indicated “citizenship” when asked where she was born, and at that point, prior to providing the documents of a U.S. citizen, she may not have made a false claim to U.S. citizenship. However, she presented documents indicating that she was a U.S. citizen and did not claim that she misunderstood the significance of the documents when questioned by officers. *Id.*

The applicant does not meet any of the exceptions under 212(a)(6)(C)(ii)(II), as the record reflects that the applicant’s parents are citizens of Albania and that the applicant knew she was a citizen of Albania at the time of her misrepresentations. *Form I-867A; Form I-213.* Moreover, the AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to her U.S. citizen spouse or whether she merits the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.