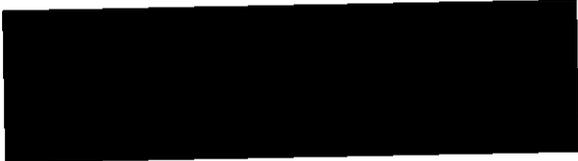


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H5

DATE: **AUG 24 2012**

OFFICE: SACRAMENTO, CALIFORNIA

File: 

IN RE:

Applicant: 

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:

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 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, Sacramento, California, and 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 having procured admission into the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant contests the finding of inadmissibility, but in the alternative, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife as well as his biological and stepchildren in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 24, 2010.

On appeal, the applicant asserts that the United States Citizenship and Immigration Services (USCIS) made an erroneous conclusion of fact in that he did not fraudulently obtain a C-1 visa in March 2006 or willfully misrepresent a material fact. Rather, he was a victim of fraud as he and his uncle believed that the person who assisted them in obtaining his visa for a fee provided a service similar to legitimate headhunters for employment in the United States. The applicant also asserts that his wife would suffer extreme emotional, financial, and medical hardship because of his inadmissibility as: she cares for her elderly grandmother; she has never travelled to the Philippines and does not have familial, social, or financial ties there; she and their children could become victims of kidnapping; they have financial debt, and the employment opportunities in the Philippines are worse; she and their son suffer from medical conditions that require access to superior healthcare, and they would lose their health insurance; she would be unable to maintain her household without his assistance; and his stepson's father has refused to give the stepson permission to live in the Philippines. *See Notice of Appeal* (Form I-290B), dated July 20, 2010.

The record includes, but is not limited to: letters of support; identity, employment, financial, and medical documents; photographs; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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.

...

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

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "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.*

The 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 relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is 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 the USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a 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 record reflects that the Field Office Director found the applicant inadmissible for having procured a nonimmigrant visa to transit the United States as a crewman by submitting fraudulent employment documents as a general laborer for Mechanical Contractors in Guantanamo Bay, Cuba. The applicant was subsequently admitted to the United States as a C-1 crewman on May 9, 2006, with permission to remain in transit until June 7, 2006. However, the applicant did not timely depart from the United States, and has remained to date.

The record also reflects that the applicant submitted a statement in support of his adjustment of status application concerning the circumstances in obtaining the C-1 visa. In his statement, the applicant indicated that he paid 50,000 pesos to his uncle in the Philippines, who met with an unidentified man, to arrange for the attainment of his contract for overseas employment, his plane ticket, and the details for the steps that he would need to undertake once he arrived at the airport in

Los Angeles. The applicant also indicated that the telephone number given to him did not work upon attempting to contact the individual in Los Angeles who was to assist him with further processing. Subsequently, he contacted his aunt in the United States, and his aunt and uncle indicated that the family would raise money for him to return to the Philippines.

The AAO finds that the record does not contain sufficient evidence that the applicant lacked the requisite knowledge of the falsity of the employment documents submitted in support of his nonimmigrant C-1 visa application, and thereby, finds that the applicant made a willful misrepresentation. The applicant asserts that his uncle handled the process concerning his employment contract, his acquisition of the visa, and travel arrangements to the United States. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). The record lacks supporting evidence such as an affidavit from the applicant's uncle. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the applicant's misrepresentation is material as he would have been excludable on the true facts; i.e., he did not have the requisite employment to be issued a C-1 visa. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The regulation at 8 C.F.R. § 245.1 provides, in pertinent part:

- (a) General. Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application ... (b) Restricted aliens. The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provision of section 245(i) of the Act and [section] 245.10 ... (2) Any alien who, on arrival in the United States, was serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon; ...

The record reflects that, on October 22, 2009, the applicant filed an *Application to Register Permanent Residence or Adjust Status* (Form I-485) simultaneously with the *Petition for Alien Relative* (Form I-130) filed by his U.S. citizen wife. USCIS approved the Form I-130 on January 28, 2009. As the applicant was admitted to the United States as a C-1 crewman on May 9, 2006, and has not established his eligibility under section 245(i) of the Act, the applicant is unable to adjust his status to lawful permanent residence in the United States and his Form I-485 application may not be approved. The applicant's Form I-601 application for a waiver is incident to his Form I-485 application for the purpose of establishing admissibility and eligibility for adjustment of status. As the applicant is statutorily ineligible to apply for adjustment of status in the United States,

no purpose would be served in determining whether the applicant has established extreme hardship to a demonstrated qualifying relative or approving his Form I-601 application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the applicant has not established that a purpose would be served in approving the Form I-601 application. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.