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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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AUG 28 2012

Date:

Office: ACCRA, GHANA

FILE:



IN RE:



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-REPRESENTED¹

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

¹ An attorney or legal practitioner appears to have prepared an appeal brief on behalf of the applicant. However, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.

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

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 attempting to procure a visa to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her U.S. citizen daughter.

The Field Office Director concluded that the applicant failed to establish that she had a qualifying relative. The Field Office Director denied the application accordingly. See *Decision of the Field Office Director*, dated July 23, 2010.

On appeal, the applicant attempts to demonstrate that she is not inadmissible and submits new evidence to support her position that she lacked the intent to commit fraud.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal or Motion (Form I-290B), an appeal brief, an affidavit and statement from the applicant, a treasury receipt, two of the applicant's school records, a copy of the applicant's birth register, an Application for Immigrant Visa and Alien Registration (Form DS-230) and an approved Petition for Alien Relative (Form I-130) with the supporting documentation for the petition. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

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 applicant presented herself under the name of [REDACTED] born January 28, 1956, to obtain a nonimmigrant visa in 2004. However, the applicant's name is [REDACTED] and she was born on January 28, 1962. She states that she uses her maiden name, [REDACTED], and that she was unaware of the mistake with regard to her date of birth in her visa application. An affidavit, a Lagos State Government treasury receipt, two

scholastic documents and a birth register indicate her maiden name. However, the applicant stated on her consular memorandum report of interview, completed and signed on May 21, 2010, that she was inadmissible "as a result of some misrepresentation of facts." Moreover, the record contains evidence that the applicant admitted to presenting a false identity and date of birth in 2004 in an attempt to obtain a non-immigrant visa and to conceal previous refusals. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the record indicates that the applicant has already admitted to her misrepresentations and she does not explain or resolve her inconsistencies concerning her admission or her use of different names, the applicant has not overcome her burden of proving her admissibility, and is therefore inadmissible.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The applicant in this case has failed to provide evidence to establish that she has a qualifying family member. Although the applicant has a U.S. citizen daughter who filed an immigrant petition on her behalf, her daughter is not a qualifying relative under section 212(i) of the Act. In order to qualify for a waiver under section 212(i) of the Act, an applicant must demonstrate extreme hardship to a U.S. citizen or lawfully resident spouse or parent. As such, the applicant is statutorily ineligible for relief.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.