

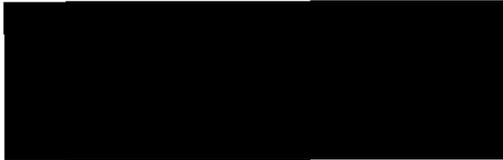
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



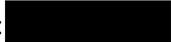
**U.S. Citizenship
and Immigration
Services**



H5

DATE: JUL 20 2012

OFFICE: ACCRA, GHANA

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:



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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is not necessary.

The record reflects that the applicant is a native and citizen of Cameroon 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 having sought to procure a visa through fraud and 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, through counsel, contests this finding of inadmissibility, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(j) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband.

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 February 19, 2010.

On appeal, counsel asserts that the applicant did not make any material misrepresentations to the authorities when she attempted to obtain immigrant and nonimmigrant visas by reversing the names on her applications, and she submitted genuine documents in support of her student visa application. Counsel also asserts that the applicant's U.S. citizen husband will continue to suffer extreme hardship because of the applicant's inadmissibility. *See Notice of Appeal or Motion (Form I-290B)*, March 19, 2010.

The record includes, but is not limited to: a brief from current counsel and statements from prior counsel; letters of support; and identity, financial, and medical documents.¹ The entire record, with the exception of the French-language documents, was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

¹ The AAO notes that the record contains some documents in the French language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

(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 (9th 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 U.S. Citizenship and Immigration Services (USICS)) 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 establishes that the applicant applied for an F-1 student visa to pursue a course of study in psychology at Southern New Hampshire University. The record also establishes that on March 29, 2007, the individual, who would fund the applicant’s studies for the duration of her F-1 status in the United States, identified himself as the applicant’s father and not uncle, as indicated by the applicant. Counsel contends that in Africa, it is customary and common practice for uncles and

aunts to identify their nieces and nephews as their sons and daughters. *Brief from Counsel*, received June 16, 2010.

The record further establishes that on the Application for Immigrant Visa and Alien Registration (Form DS-230, Part 1), the applicant's first, middle, and family names are indicated, respectively: [REDACTED]. And, on the applicant's nonimmigrant visa application, the applicant's given name is indicated as, [REDACTED] and her surname as, [REDACTED]. Counsel contends that the applicant's immigrant and nonimmigrant visa applications did not reverse the applicant's name order as the applicant submitted the same passport with both visa applications.

Based on the record, the AAO finds that the applicant did misrepresent the relationship to the individual who would sponsor her during her academic studies in the United States as an F-1 Student. Counsel has not presented any evidence or information to explain familial or social relationships in Nigeria. 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)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, the applicant's misrepresentation is not material given that the true facts, i.e., that the sponsor is the applicant's uncle and not her father, does not render the applicant inadmissible to the United States as a potential student. Additionally, the applicant's misrepresentation did not shut off a line of inquiry that was relevant to her eligibility and that might well have resulted in a proper determination that she be found inadmissible.

Also based on the record, the AAO finds that the applicant did not misrepresent her identity when she applied for the nonimmigrant and immigrant visas. She consistently used the names: [REDACTED] and the date of birth, May 15, 1983. Her birth certificate and passports also indicate those names with the same date of birth.

The AAO notes that the Field Office Director further found the applicant inadmissible for having presented in support of her student visa application a fraudulent letter issued by the Afriland First Bank. It was purported that the signatory officer, who signed the letter attesting to the financial solvency of the applicant's student visa sponsor, did not work at the bank any longer. The AAO also notes that the record does not include a letter that discusses the solvency of the applicant's student visa sponsor. The only letter in the record issued by the Afriland First Bank is an uncertified translation of a letter submitted in support of the appeal, and which ostensibly was unavailable at the time of the determination of the applicant's extreme hardship waiver application. Thereby, the AAO finds that the record does not contain sufficient evidence that the applicant submitted a fraudulent document in support of her student visa application.

Accordingly, the AAO finds that the applicant did not fraudulently or willfully misrepresent any material fact and she is not inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible, and the Field Office Director's findings regarding fraud and

misrepresentation under section 212(a)(6)(C) of the Act will be withdrawn. The waiver application filed pursuant to section 212(i) of the Act is therefore not necessary.

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. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i). Here, the applicant is not required to file for a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the waiver application is not necessary.

ORDER: The applicant's waiver application is declared unnecessary and the appeal is dismissed.