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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**

[Redacted]

715

DATE: **JUL 20 2012** Office: MEMPHIS, TN 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 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, Memphis, Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 procuring a visa to the United States by fraud or willful misrepresentation of a material fact, and pursuant to Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for being an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the exception for inadmissibility for smuggling does not apply, and that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Field Office Director*, dated May 20, 2009.

On appeal, counsel asserts that the applicant did not commit fraud or willful misrepresentation and she did not smuggle anyone into the United States; and the applicant's spouse would experience extreme hardship. *Brief in Support of Appeal*, dated June 22, 2009.

The record includes, but is not limited to, counsel's brief and the applicant and her spouse's statements. 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, 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 documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

On August 9, 2007, the applicant filed a nonimmigrant visa application for her grandson, in which she misrepresented her grandson as her son. Where an individual makes a misrepresentation in connection with another's application for a benefit under the Act, the individual is not rendered

inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954). As such, the AAO does not find the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for the misrepresentation she made on her grandson's nonimmigrant visa application.

The AAO also notes that the applicant listed her grandson as her son on her own August 9, 2007 nonimmigrant visa application and on her Form I-485, Application to Register Permanent Residence or Adjust Status, filed on November 2, 2007. She also listed her granddaughter as her daughter on her Form I-485. The test of whether a misrepresentation is material was restated by the United States Supreme Court in the context of a proceeding to revoke naturalization. *See Kungys v. U.S.*, 485 U.S. 759 (1988). The court held in *Kungys* that the false statements must be shown to have been predictably capable of affecting the decisions of the decision-making body for them to be material. A misrepresentation made in connection with an application for a visa or other document, or in connection with an entry into the United States, has a natural tendency to influence the decision on the person's case, if either:

- the alien is inadmissible/removable/ineligible on the true facts; or
- the misrepresentation tends to cut off a line of inquiry, which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he or she is inadmissible. *See Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1961).

As these two scenarios are not applicable to the applicant, the AAO finds that her misrepresentations are not material and she is not inadmissible under section 212(a)(6)(C)(i) of the Act for them. As such, she does not need a waiver under section 212(i) of the Act.¹

The record reflects that the applicant assisted and aided her grandson in obtaining a nonimmigrant visa by falsely listing him as her son and submitting a birth certificate which falsely listed her as his mother. Counsel's claim that the nonimmigrant visa application was filled out in accordance with Mexican legal documents listing her grandson as her son lacks merit, as this does not change the fact that she misrepresented herself as her grandson's mother in his nonimmigrant visa application. Therefore, the applicant is inadmissible under section 212(a)(6)(E) of the Act for knowingly aiding and assisting her grandson in entering the United States in violation of law.

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

- (i) In general-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

...

¹ The record does not reflect that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for admitting the essential elements of a crime involving moral turpitude, as asserted by the field office director in her May 20, 2009 decision on the applicant's Form I-485.

(iii) Waiver authorized-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Section 212(d)(11) of the Act does apply to the applicant as she aided and assisted her grandson and grandchildren are not listed in this section of the Act as qualifying relatives.

In proceedings for application for waiver of grounds of inadmissibility, 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.