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



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

[Redacted]

715

DATE: OFFICE: ST. PAUL, MN

JUL 27 2012

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

The applicant is a native and citizen of Russia who has resided in the United States since September 5, 1991, when he was admitted in Q-1 nonimmigrant status. He was later 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 attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 20, 2010.

On appeal, counsel for the applicant contends the applicant's spouse would experience emotional, medical, and financial hardship upon separation. Counsel asserts that the spouse would also experience extreme hardship if she relocated to Russia given the poor economy, lack of adequate medical care, adverse country conditions, and separation from her ties in the United States.

The record includes, but is not limited to, evidence of birth, marriage, residence, and citizenship, documentation of removal proceedings, medical, financial, and educational documents, statements from the applicant and his spouse, letters from family members, friends, and members of the community, documentation of community involvement, police reports, articles on country conditions, and articles on medical conditions. 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.

Section 212(i) of the Act provides:

- (1) The [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.

In the present case, the record reflects that with his asylum application the applicant submitted a fake birth certificate which lists his mother's nationality as "Jewish" when his true birth certificate describes her nationality as "Russian." *See birth certificates.*¹ The Field Office Director found that the applicant was inadmissible pursuant to section 212(a)(6)(C) of the Act due to that discrepancy on the birth certificates. *See Decision of Field Office Director* dated December 20, 2010.

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). There is no indication in the record that the applicant had the requisite knowledge of falsity and intent to deceive immigration officials for a finding of fraud. Therefore, the AAO will analyze whether the applicant is inadmissible under section 212(a)(6)(C) of the Act for misrepresentation of a material fact.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. 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 (BIA 1960; AG 1961). The applicant's representation of his mother's "Jewish" nationality on his birth certificate would therefore be a material misrepresentation if the applicant was ineligible for asylum status due to his mother's true identity on his birth certificate as a Russian national, or if his mother's true identity as listed on the birth certificate shut off a line of inquiry which was relevant to his eligibility for asylum status.

¹ This appears to be the only piece of differing information on the birth certificates.

Neither scenario is the case. The applicant's asylum claim was based on his own Jewish identity, not his mother's, and the persecution he experienced in Russia due to his identity. *See Form I-589, Request for Asylum in the United States*, August 26, 1993. Whether the applicant's mother is listed as "Russian" or "Jewish" on the birth certificate submitted in 1993 is not material to whether he is eligible for asylum status as a Jewish person in Russia.² The record reflects that the applicant is in fact Jewish. A letter from [REDACTED] of the Adath Jeshurun Congregation, confirms that the applicant is Jewish, and has been attending services at the congregation. *Letter from* [REDACTED] August 25, 1999. Another letter from [REDACTED] indicates that the applicant is a "fellow Jew" and that he has "spent many years working for free at the Jewish Community Center with other Jewish refugees teaching Aikido and music." *Letter from* [REDACTED] August 18, 1999. A letter from the Jewish Community Center of Greater Minneapolis corroborates that the applicant has volunteered many hours of his time developing the Aikido program at the Center. *Letter from* [REDACTED] March 7, 2001. The Sabes Jewish Community Center adds that in 2006 he spent 98 hours volunteering at their center. *Letter from* [REDACTED] December 31, 2006. The record therefore contains sufficient evidence to show that the applicant is Jewish. In that the applicant's identity as Jewish is material to his claim of persecution in Russia, not his mother's nationality as described on his birth certificate, the AAO finds that the applicant did not make a misrepresentation of material fact in submitting the birth certificate listing her nationality as "Jewish."

Based on the record, the AAO finds that the applicant, in presenting a birth certificate which describes his mother as a person of "Jewish" nationality, did not commit fraud or misrepresent a material fact for immigration purposes and is not inadmissible under section 212(a)(6)(C) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore unnecessary.

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 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver.

ORDER: The appeal is dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

² It is noted that the immigration judge did not reach a finding on the merits of the asylum application, and terminated proceedings on January 21, 2005.