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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



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[REDACTED]

DATE: **MAR 05 2012** OFFICE: SACRAMENTO, CA

[REDACTED]

IN RE: [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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Elizabeth R. New  
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 remanded to the Field Office Director for further action.

The applicant is a native and citizen of the Philippines who has resided in the United States since April 21, 2001, when she was admitted to the United States pursuant to a B-1/B-2 nonimmigrant visa. The Field Office Director found that the applicant later obtained H-1B status by using fraudulent documents and in addition, attempted to bring her son to the United States by filing a fraudulent H-4 visa. She 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 procured a benefit provided under the Act through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Form I-130, 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 her lawful permanent resident spouse.

The Field Office Director concluded that the applicant failed to show extreme hardship if the applicant were removed from the United States and denied the application accordingly. *See Decision of Field Office Director* dated June 15, 2011.

On appeal, counsel for the applicant alleges that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because the applicant was the unknowing victim of the [REDACTED] law firm, and should not be held responsible for the law firm's actions with respect to her case. Furthermore, counsel asserts that the Field Office Director abused its discretion in penalizing the applicant for making all legal arguments available to her. Counsel then contends even if the applicant is found liable for the misrepresentation, she has shown enough hardship to warrant approval of the waiver application.

The record includes, but is not limited to, statements from the applicant and her spouse, letters from family and friends, evidence of birth, marriage, divorce, permanent residence, and citizenship, evidence of community involvement, other applications and petitions filed on behalf of the applicant, financial documents, articles on immigration fraud, a brief in support of the I-601 waiver application, evidence of country conditions, and documents related to removal proceedings. 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.

In the present case, the record reflects that the law firm [REDACTED] law firm) filed a Form I-129, Petition for Nonimmigrant Worker, and an extension, on behalf of the petitioning employer, [REDACTED].<sup>1</sup> Credentials from the University of Santo Tomas (the University) in the Philippines were included with the petition as evidence that the applicant qualified as an accountant, which is the specialty occupation listed on the Form I-129 Petition and extension. The University later determined that these credentials were fraudulent. In her statement, the applicant explains that she found the employer, requested a position as a caregiver, and only when she received her H-1B approval notice did she realize her occupation was listed not as a caregiver but as an accountant. The applicant states that she informed the [REDACTED] law firm of this mistake, and was told that they would take care of it. The applicant further explains that the [REDACTED] law firm responded to all requests for documents from USCIS, and that she had no reason to doubt or suspect the firm of any wrongdoing.

In his decision the Field Office Director noted that the Service had found evidence in the record that the applicant knowingly committed fraud. After a thorough review of the record the AAO has found nothing to indicate that the H-1B petitions or supporting documentation were obtained, submitted or filed by the applicant. Nor do any of the petitions contain the applicant's signature. Without evidence of record indicating that the applicant, not her attorney or petitioning employer, made these or any other misrepresentations with respect to the H-1B petitions, there is insufficient evidence to establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Moreover, the record does not contain evidence that the applicant misrepresented facts in order to obtain an H-4 nonimmigrant visa for her son.<sup>2</sup> Even if she made false statements with respect to her son's visa, these actions would not necessarily trigger inadmissibility under section 212(a)(6)(C)(i) of the Act, because 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) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961)(emphasis added).

Therefore, the AAO remands the matter to the Field Office Director for further examination of the applicant's inadmissibility. Should the Field Office Director determine that Service records are insufficient to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, the Form I-601 will be moot and no further action will be required. In the alternative, should the Field Office Director have sufficient evidence to support the finding of inadmissibility, he will render a new decision outlining the evidence and certify the decision to the AAO for adjudication.

**ORDER:** The matter is remanded to the Field Office Director for further proceedings consistent with this decision.

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<sup>1</sup> As noted by both counsel and the Field Office Director, principals from this law firm were eventually convicted of filing fraudulent immigration applications and petitions.

<sup>2</sup> The H-4 visa application is not present in the record, nor did the applicant attend the H-4 visa interview.