

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]

H5

DATE: **NOV 06 2012** OFFICE: CHICAGO, IL

FILE [REDACTED]
[REDACTED] CONSOLIDATED

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of India who has resided in the United States since September 2000, when he entered without inspection. He 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 attempted to procure an immigrant visa through fraud or misrepresentation. The applicant is the son 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 father and lawful permanent resident mother.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 19, 2010.

On appeal, counsel contends the applicant is not inadmissible for fraud or misrepresentation because the documents in question, though perhaps not authentic, are immaterial in light of the fact that the Form I-130 Petitioner has been scientifically proven to be the applicant's biological father. Counsel additionally asserts both the applicant's mother and father will experience extreme hardship given the applicant's inadmissibility.

The record includes, but is not limited to, statements from the applicant's parents, evidence of birth, marriage, residence, and citizenship, a psychological evaluation, medical and financial documents, letters from community members, and other applications and petitions. 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.

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).

On June 17, 1991, [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. This Petition was approved July 6, 1991. The Field Office Director found the applicant submitted a birth certificate issued in March 1991 which was not issued by an entity authorized to issue birth certificates. The record also reflects that during the applicant's initial consular interview an altered school leaving form naming the Form I-130 petitioner as the applicant's father was presented, when a later investigation revealed that the correct school leaving form listed the petitioner's brother as the applicant's father. The applicant's mother subsequently signed a sworn statement indicating that the applicant was not her son, nor the I-130 petitioner's son, but in fact was the petitioner's brother's son. *Sworn statement*, April 24, 1995. On September 23, 1998 the Form I-130 Petition was revoked, and the Board of Immigration Appeals dismissed a subsequent appeal.

The I-130 petitioner filed another Form I-130 Petition on the applicant's behalf on June 19, 2000. This petition was approved on September 25, 2001. USCIS issued a Notice of Intent to Revoke the petition, but upon consideration of additional evidence, including results of DNA testing, the approval was reaffirmed. *Decision on Petition for Alien Relative*, April 23, 2007.

The Field Office Director found the applicant inadmissible for submitting the 1991 birth certificate and the school leaving certificate because the documents were provided in an effort to prevent further questioning into his educational records, which would have revealed a discrepancy with regard to his parentage. *Decision of Field Office Director* dated August 19, 2010. However, the applicant's father was the Form I-130 petitioner, not the applicant, and it was the applicant's father who signed the I-130 Petition and submitted supporting documents.¹ Though these actions may

¹ It is also noted that the applicant was 16 years old when he had his initial consular interview.

have rendered the father inadmissible under other another section of the Act for attempting to procure a visa for his son, the record reflects that the applicant, who was a minor when the I-130 Petition was filed and the initial interview was conducted, was not the party who made the representations. *See Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954). Therefore, because the applicant did not make these representations, he cannot be inadmissible for them.

In any event, the AAO further finds that any misrepresentation made was not material. The record, which contains several DNA tests, establishes that the I-130 petitioner is in fact the applicant's biological father. There is no indication that failing to submit the 1991 birth certificate and the school leaving certificate would have revealed a ground of inadmissibility or that it shut off a line of inquiry which would have resulted in a finding of inadmissibility. The applicant remained admissible as the petitioner's biological son despite any documentary discrepancies. Submission of the documents did not affect admissibility, and as such, cannot be held to be material misrepresentations. *See Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1964) (Submission of a forged job offer in the United States was not material when the alien was not otherwise inadmissible as an alien likely to become a public charge).

Moreover, there is no evidence of record that the applicant committed fraud. 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). In the present case, the false representations were not material, and the record contains no evidence demonstrating that the applicant possessed the requisite intent to commit fraud.

Based on the record, the AAO finds that in seeking an immigrant visa the applicant 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 a 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. Accordingly, the appeal will be dismissed as unnecessary.

ORDER: The appeal is dismissed as unnecessary.