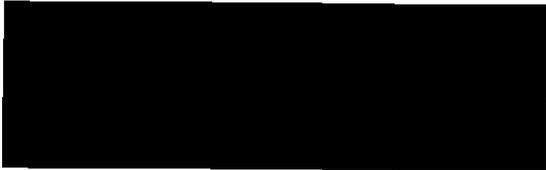


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H15

DATE: OCT 09 2012

OFFICE: ROME, ITALY

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:

SELF-REPRESENTED

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,

A large, stylized handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The applicant is a native and citizen of Nigeria 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen fiancée.

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 June 5, 2012.

On appeal, the applicant's U.S. citizen fiancé contests the applicant's inadmissibility and asserts that she will suffer extreme hardship of an emotional/psychological, medical/health-related, economic, and safety-related nature if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received June 25, 2012.

The record contains, but is not limited to: Form I-290B and requests by the applicant's fiancée for, and correspondence concerning, expedited processing of the waiver appeal; numerous letters and electronic communications from the applicant's fiancée to U.S. government authorities charging mishandling by the United States Immigration and Citizenship Services (USCIS) of the applicant's case; various immigration applications and petitions; numerous hardship letters from the applicant's fiancée; a letter from the applicant; numerous letters of support; medical and psychological letters and records; Nigerian country conditions reports and documents; financial and business records and receipts; birth-related and visa-related records; and photographs. The entire record was reviewed and considered in rendering this 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.

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 United States Citizenship and Immigration Services) 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:

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 or she be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The record shows that on December 5, 2008 the applicant misrepresented his date of birth before a Consular Officer in Lagos, Nigeria in connection with a non-immigrant visa application. The field office director writes that when the applicant indicated on his visa application a date of birth five years earlier than his own, he did so to increase his chances of the visa being issued. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

The record does not support that a difference of five years of age had an impact on the applicant's eligibility for a visa, or that he would have been excludable had he accurately reported his true age. Nor does the record show that the misrepresentation tended to shut off a line of inquiry relevant to his eligibility which might have resulted in a proper determination that he be excluded as required by [REDACTED]. The record does not show that the applicant misrepresented other information that may serve as a basis for inadmissibility under section 212(a)(6)(C)(i) of the Act.

Accordingly, the AAO concludes that the applicant did not misrepresent a material fact and is not, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act. The field office director's findings concerning inadmissibility under section 212(a)(6)(C)(i) of the Act will be withdrawn. The record does not show that the applicant is inadmissible based on other grounds within the Act. Therefore, the applicant is not inadmissible and the present waiver application will be deemed unnecessary. The applicant's file will be returned to the field office director to continue processing consistent with this decision.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.