

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

415

[REDACTED]

DATE:

OCT 16 2012

OFFICE: PHILADELPHIA, PENNSYLVANIA

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,

A handwritten signature in black ink, appearing to be "Perry Rhew", with a long horizontal line extending to the right.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania 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 Mexico 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 remain in the United States with her U.S. citizen spouse.

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 April 21, 2010.

On appeal, counsel contends that the applicant is not inadmissible and, in the alternative, if the waiver is not granted her spouse will suffer extreme hardship. *See Notice of Appeal or Motion*, received May 24, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; numerous immigration applications, petitions, and related documents; a Form I-72 requesting submission of the fraudulent I-551 card and social security card used by the applicant for employment purposes; copies of said cards; the applicant's affidavit; affidavits in support of the applicant; an employment verification letter; paystubs, tax returns and billing statements; the applicant's spouse's sworn statement concerning marriage fraud; records from multiple interviews with the applicant and the applicant's spouse; and birth, marriage and divorce records. 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 indicates that during her adjustment of status interview on July 16, 2009, the applicant testified that she used a fraudulent lawful permanent resident card (Form I-551) to enter the United States. Based on the foregoing, the field office director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The field office director notes in her decision that the applicant subsequently submitted an affidavit explaining that she in fact never used a fraudulent green card to enter the United States and that nervousness caused her to provide inaccurate testimony during the interview. The field office director found this explanation to lack credibility as it is a self-serving statement. The AAO disagrees.

A thorough review of the record shows that the applicant has consistently indicated since 1997 that she last entered the United States without inspection in or about June 1993 and thereafter purchased a fraudulent lawful permanent resident card and social security card which she used only in conjunction with securing employment in Pennsylvania. The only time the applicant has ever stated differently on the record was during her July 2009 adjustment interview. On the first Form I-130, Petition for Alien Relative, filed on the applicant's behalf on February 26, 1997, it is indicated that she last arrived in the United States "EWI." On the applicant's first Form I-485, Application for Adjustment of Status, filed May 9, 1997, she indicates that the status under which she last entered the United States was "E.W.I." On the Form I-468, Processing Sheet Forms I-485 & I-485A, dated May 9, 1997 under G-325A Agency Checks, Remarks, "EWI" is indicated. On the first Form I-601, Application for Waiver of Grounds of Inadmissibility, filed May 9, 1997, the applicant indicates that she was declared inadmissible for: "Use of other person's social security number. And false 'green card'." There is no indication as to the circumstances under which the cards were used. On Form I-181, Memorandum of Creation of Record of Lawful Permanent Resident, dated September 16, 1997 the applicant's N/I Class at time of Adjustment, is listed as "EWI." On a Form I-72, Request for Evidence, dated September 15, 1997, a request is made by the then Immigration and Naturalization Service (INS) for the applicant to provide the "Fraudulent I551 and SSAN card used for employment." In an internal memo dated February 6, 1998, an INS officer notes: "At the time of the interview the subject admitted to having entered the USA without inspection and having purchased a fraudulent I-551 and social security cards. These documents have been submitted by the subject and are on the file." The memo continues that in response to a request for evidence, "applicant's attorney of record submitted the fraudulent I551 and SSAN cards along with a statement from the subject relative to their use." On an approved Form I-140, Immigrant Petition for Alien Worker, filed September 12, 2003, the applicant's current nonimmigrant status is listed as "EWI." On an approved Form I-130, filed January 23, 2009, it is indicated concerning the applicant that "she last arrived as a: EWI." The AAO notes

that this Form I-130 was approved on July 16, 2009, the same date as the adjustment interview during which the applicant indicated for the first and only time in her lengthy documented immigration history, that she used a fraudulent lawful permanent resident card and social security card to enter the United States. On a Form I-485, filed January 23, 2009, the applicant lists her current status as "EWI." On the Form I-601 filed on September 4, 2009, the applicant indicates that her reason for inadmissibility is: "I bought a fake permanent resident card and Social Security card 2 or 3 months after I entered the USA. I used them once in 1993 to get a job at a restaurant. I never used them again..."

In an affidavit submitted after the applicant's July 16, 2009 adjustment interview she writes: "One month after July 1993, I went to a store to purchase food and saw this man outside the store selling fake papers. That is when I bought my false pink resident alien card and social security card for \$45. I did not use them until I came to Pennsylvania. ... On December 31, 1993, I traveled to [REDACTED]. On January 5, 1994, I began to work in [REDACTED] using the false pink card and the false social security card that I purchased in California. I never used the false documents in California. In Pennsylvania I managed to find work and use the false documents. When I had my interview with immigration in 1997, they asked me for my documents and I gave it to them." The applicant continues: "By all that is sacred, I ask U.S.C.I.S. to forgive me for my confusion and nerves on the day of my interview, July 16, 2009. My nervousness caused me to give an inaccurate testimony. I never used a fraudulent green card to enter the country nor work in California. I used the pink card and social security number only once to work in Pennsylvania at [REDACTED] and I still work there."

Counsel points to the fact that the Form I-72, dated September 15, 1997, specifically requests the "Fraudulent I551 and SSA card used for employment," as evidence that since 1997 U.S. immigration authorities have recognized that the applicant entered the United States without inspection and used the fraudulent lawful permanent resident and Social Security cards only for employment purposes. Counsel correctly contends that there is no evidence in the record, other than the applicant's July 16, 2009 interview statement, to suggest that she used the false permanent resident card to enter the United States. And while the applicant's subsequent affidavit and statement that she misspoke out of nervousness is clearly self-serving, there is no basis to conclude that it is not also true, particularly in light of consistent and substantial documentary evidence accumulated over a 15-year period.

Thus in reviewing the record as currently constituted, the AAO finds that the applicant has established that she never used a fraudulent permanent resident card to enter the United States rendering her inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the AAO concludes that the applicant did not misrepresent or conceal 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 waiver application filed pursuant to section 212(i) of the Act will, therefore, be determined to be unnecessary as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's file will be returned to the field office director to continue processing consistent with this decision.

██████████  
Page 5

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