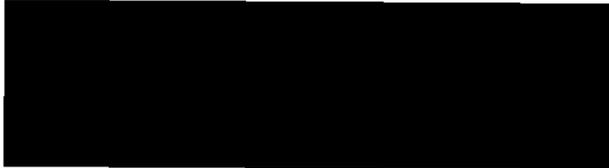


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



115

Date: **OCT 26 2012** Office: NAIROBI FILE: 

IN RE: 

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,


for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Nairobi, Kenya. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed and the prior decision of the Field Office Director is withdrawn as the applicant is not inadmissible and the application for a waiver of inadmissibility is therefore not required.

The applicant 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 a visa, other documentation, or admission into the United States or other benefit provided by the Act by fraud or willful misrepresentation. Specifically, the field office director noted that when the applicant applied for asylum in the United Kingdom, he indicated that his claimed place of birth and citizenship was Rwanda. However, when applying for immigration benefits in the United States, including the Form I-130, Petition for Alien Relative, he declared that he was born in Uganda and was a Ugandan citizen. The field office director determined that the applicant had provided material misrepresentations that called into question his true identity. The applicant requests 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 spouse and child.

The field office director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director* dated May 25, 2011.

On appeal, the applicant contends that he never declared Rwanda as his birthplace and thus, he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *See Form I-290B and Attachment*, dated June 22, 2011.

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 the present case, based on a thorough review of the record, the AAO concurs with the applicant that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The record fails to establish that he committed fraud or made a willful misrepresentation before a United States government official to obtain an immigration benefit under the Act. As noted above, the field office director concluded that the applicant had misrepresented his birthplace on an asylum application before the Home Office, Immigration and Nationality Directorate, United Kingdom, and the Asylum and Immigration Tribunal of the United Kingdom. Whether or not the applicant did in fact misrepresent his birthplace when applying for asylum in the United Kingdom is not relevant to a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, as the referenced misrepresentation, if in fact made by the applicant, was made before the United Kingdom, and not for a visa, other

documentation, or admission into the United States or other benefit provided under the Immigration and Nationality Act.

The AAO notes that the applicant, in all documents submitted to the USCIS, has declared that he was born in Uganda, and the birth certificate for his daughter, born in 2003, also lists Uganda as his place of birth. The Form I-130, which was approved in March 2008, listed his birth place as Uganda. Finally, the record establishes that the applicant presented a Ugandan birth certificate to the U.S. Embassy in Nairobi in 2010, and the record does not establish that this document was fraudulently obtained.

A review of the record reflects that the applicant did not misrepresent a material fact because the applicant is eligible for an immigrant visa notwithstanding any statements he may have previously made regarding his birth place when applying for asylum in the United Kingdom.¹ The AAO thus finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed because the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and an application for a waiver of inadmissibility is therefore not required.

ORDER: The appeal is dismissed and the prior decision of the Field Office Director is withdrawn as the applicant is not inadmissible and an application for a waiver of Inadmissibility is therefore not required.

¹ The AAO notes that despite the Field Office Director's findings, the record does not establish that the applicant in fact misrepresented his birth place when applying for asylum in the United Kingdom. The Home Office, Immigration and Nationality Directorate, United Kingdom, noted that "it is accepted that in 1959 your mother and father went to Uganda as refugees and that you are a Rwandan national although born in Uganda..." *See Reasons for Refusal, Home Office, Immigration and Nationality Directorate, United Kingdom*, dated October 20, 2006. Further, the Asylum and Immigration Tribunal, United Kingdom, on appeal, noted that the applicant was born in Uganda. *See Appeal Determination from Asylum and Immigration Tribunal, United Kingdom*, dated February 22, 2007.