

(b)(6)



**U.S. Citizenship
and Immigration
Services**



Date: **APR 18 2013**

Office: TAMPA

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:



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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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 The appeal is dismissed, the prior decision of the Field Office Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

The applicant is a native and citizen of Slovakia who was found to be inadmissible to the United States pursuant to 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 fraud or willful misrepresentation. Specifically, the Field Office Director determined that the applicant willfully misrepresented a material fact with respect to a Form I-130, Petition for Alien Relative (Form I-130), submitted on his behalf. The applicant is applying for 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 spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 28, 2012.

On appeal, counsel asserts that the finding by the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is in error; alternatively, counsel asserts that the applicant has demonstrated that his spouse would experience extreme hardship if his waiver were not approved. *Statement Attached to Form I-290B, Notice of Appeal or Motion*, dated July 25, 2012. The entire record was reviewed and considered in arriving at a 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (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.

The Field Office Director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for making a material misrepresentation for a benefit under the Act based on the applicant's participation in the filing of a fabricated Form I-130, filed on the applicant's behalf by his sister, a Slovakian citizen who was not eligible to file the petition.

On appeal, applicant's counsel contends that the applicant is not inadmissible for misrepresentation, as the applicant did not intend to deceive immigration authorities, and that any resulting misrepresentation was not willful. In the brief filed in support of the applicant's Form I-601, counsel stated that in response to U.S. Citizenship and Immigration Service's (USCIS) questions regarding the filing of the Form I-130, the applicant testified that: his co-worker referred him to a notary, based out of Dover, Florida, and he paid the notary \$200 in cash for the purpose of assisting him to obtain a driver's license; the notary completed paperwork on his behalf and filed it with USCIS, but he did not know what paperwork specifically was being completed because he did not speak English; shortly thereafter he received correspondence from USCIS, which he used to apply for a Florida driver's license; he did not know that the notary was doing anything wrong; and had he known he would have never hired her to complete the paperwork. The Record of Sworn Statement executed at the field office on November 17, 2011 confirms counsel's summary of the applicant's testimony.

The AAO notes that according to the Record of Sworn Statement, the applicant was asked what document he signed, and he responded that he did not remember. When shown the signature block on part E of the fraudulent Form I-130 and asked whether the applicant wrote the name on the Form I-130, the applicant responded that it looked like his handwriting and that he has similar handwriting.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In the case at hand, the record fails to establish that the applicant, by fraud or willful misrepresentation, attempted to procure an immigration benefit. The record only indicates that a Form I-130 was submitted on the applicant's behalf. The record does not conclusively establish that the applicant signed the petition, and the record includes no application for an immigration benefit, such as a Form I-485, Application to Register Permanent Residence or Adjust Status, reflecting a material misrepresentation or fraud signed and submitted by the applicant. The record therefore fails to establish that the applicant himself sought an immigration benefit through fraud or misrepresentation.

Based on the record, it has not been established that the applicant made a willful or material misrepresentation to procure an immigration benefit under the Act. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the Form I-601 is not necessary. Having found that the applicant does not require a waiver, no purpose would be served in discussing whether his U.S. citizen spouse has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed, the prior decision of the Field Office Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

ORDER: The appeal is dismissed, the prior decision of the Field Office Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.