



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JUL 09 2013** Office: BALTIMORE, MARYLAND

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible.

The record reflects that the applicant is a native and citizen of El Salvador 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 willfully misrepresenting a material fact in order to seek U.S. immigration benefits. The record indicates that the applicant is married to a U.S. citizen and is the mother of three U.S. citizen children. She also is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The District Director also found that the applicant was not an applicant for adjustment of status and had "no basis for filing Form I-601." *Decision of the District Director*, dated December 21, 2011.

On appeal, the applicant, through counsel, states that the applicant's husband and children suffer from medical conditions and that she is the primary caretaker of their children. The applicant also contests her inadmissibility, asserting through counsel that she did not knowingly and willfully misrepresent material facts concerning her immigration proceedings, which had been administratively closed. *Form I-290B, Notice of Appeal or Motion*, filed January 20, 2012 (Form I-290B).¹

The record reflects that the applicant entered the United States on November 11, 1987 without inspection, was apprehended and was issued an Order to Show Cause and notice of hearing before an immigration judge. On February 18, 1988, the applicant applied for asylum. The immigration judge denied the applicant's asylum application but granted her voluntary departure, to depart by July 23, 1988. On May 31, 1988, the applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On January 12, 1991, the BIA ordered the applicant's case "continued indefinitely without further Board action," stating that the applicant was eligible to apply for Temporary Protected Status (TPS) and could exercise her rights under the *American Baptist Churches (ABC)* settlement agreement. The BIA noted that if any party desired further action by the BIA, "a written request to reinstate these proceedings may be made" directly to the BIA. On or about April 11, 1991, the applicant first applied for TPS. On April 27, 1995, the applicant submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), as a derivative of her husband's approved Petition for Alien Worker (Form I-140). On the Form I-485, in response to question 9, the applicant indicated that she was not then in exclusion or deportation proceedings. On November 16, 1995, the applicant was granted lawful permanent resident status.

On February 13, 2002, the applicant submitted an Application for Naturalization (Form N-400), on which she stated that no deportation proceedings were pending against her. During her interview for

¹ The Form I-290B indicates that counsel would submit a brief or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO, thus the record is considered complete as of the date of this decision.

naturalization, the applicant responded to questions about immigration proceedings by stating that she was not in exclusion or deportation proceedings at that time. Her application for naturalization was denied because the District Director found she had willfully misrepresented a material fact to obtain lawful permanent resident status by stating she was not in deportation proceedings; he also found that she had not established that she was lawfully admitted as a permanent resident.

In her affidavit dated January 15, 2003, the applicant explained that she did not intend to misrepresent facts at her interview. The applicant claimed that she knew that she had never been deported or removed and that she understood her case to have been administratively closed by the BIA under the *ABC* settlement agreement. She therefore believed she was not before the immigration court when she filed Form I-485 and did not understand how she could be in deportation proceedings if her case had been administratively closed. In 2004 the applicant submitted Form I-601 following her request for hearing concerning her denied naturalization application, in which the District Director found her inadmissible under section 212(a)(6)(C) of the Act.

The AAO's appellate authority in this case is limited to those matters that are within the scope of the Form I-601 waiver application. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).² The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner; therefore, the AAO cannot consider the applicant's assertions related to the District Director's findings in his denial of her Form N-400 and will limit its discussion to the issue of whether the applicant is inadmissible under section 212(a)(6)(C) of the Act for having sought to procure a benefit under the Act through misrepresentation.

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.

To commit fraud, an alien must have made a false representation of a material fact, with knowledge of its falsity and with an intent to deceive a government official, and the misrepresentation must have been believed and acted upon by the official. *Matter of G-G*, 7 I. & N Dec. 161, 164 (BIA 1956) A willful misrepresentation, however, only requires that the alien knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15, I. & N. Dec. 288, 289-90 (BIA 1975). The term "willful" should be interpreted as

² Although 8 C.F.R. § 103.1(f)(3)(iii), as in effect on February 28, 2003, was subsequently omitted from the Code of Federal Regulations, courts have recognized that DHS continues to delegate appellate authority to the AAO consistent with that regulation. *See U.S. v. Gonzalez & Gonzalez Bonds and Insurance Agency, Inc.*, 728 F.Supp.2d 1077, 1082- 1083 (N.D. Cal. 2010); *see also Rahman v. Napolitano*, 814 F.Supp.2d 1098, 1103 (W.D. Washington 2011).

knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G*, 7 I. & N Dec. 161.

The record does not establish that the applicant knowingly and intentionally misstated facts concerning her immigration-court proceedings. The AAO finds that the applicant's statement that she believed that the administrative closure of her case by the BIA indicated that she was no longer in proceedings to be persuasive. The language on the Form I-485 asks if the applicant has "ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year or are you now in exclusion or deportation proceedings." The applicant clearly had never been deported, removed or excluded. As her proceedings had been administratively closed in order for her to apply for TPS it would be credible that she believed that she was no longer in proceedings. The AAO therefore, finds that the applicant did not make a willful misrepresentation in order to gain an immigration benefit, is not inadmissible under section 212(a)(6)(C) of the Act and therefore, not in need of a waiver of inadmissibility³.

ORDER: The appeal is dismissed as the applicant is not inadmissible.⁴

³ The AAO notes the District Director's finding that the Form I-601 must be denied as there is no underlying Form I-485, however, as the AAO has found that the applicant is not inadmissible, there is no need for the Form I-601 and, therefore, whether there is an underlying Form I-485 is irrelevant.

⁴ While the AAO has found that the applicant is not inadmissible, the issue of whether she is a lawful permanent resident remains unclear. There is no evidence in the record that the applicant was served with a notice of intent to rescind her permanent resident status or that her lawful permanent resident status was rescinded in accordance with section 246 of the Act, 8 U.S.C. §1256, and 8 C.F.R. § 246. Moreover, the record does not include evidence that the applicant was issued a final order of removal by an immigration judge, which would have effected a rescission of her permanent resident status. The District Director, however, concluded that the applicant never was lawfully admitted for permanent resident status, because she willfully misrepresented facts concerning her immigration proceedings.

As the AAO has found that the applicant did not willfully misrepresent a material fact, the District Director must review the record and determine the applicant's current immigration status. If the District Director determines that the applicant's lawful permanent resident status was never properly approved, the matter is closed and no further action is required. This does not, however, preclude the applicant from reapplying for adjustment of status by filing a new Form I-485. If the District Director determines that the applicant is still a lawful permanent resident, the District Director shall take the necessary procedural steps to complete the applicant's pending immigration applications.