



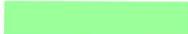
U.S. Citizenship
and Immigration
Services

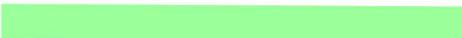
(b)(6)



Date: **JUN 10 2013**

Office: MEXICO CITY

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.

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 Field Office Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition of 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 live in the United States with his U.S. citizen father.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated February 22, 2012.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible because he was a minor at the time of his attempted entry, and "it has not been proven that" he had knowledge that he was using a fraudulent passport. The applicant's attorney also contends that the applicant's father would suffer extreme hardship were he to relocate to Jamaica.

The record includes but is not limited to: an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; affidavits from the applicant and qualifying parent; country-conditions documentation regarding Jamaica; relationship and identification documents for the qualifying parent and applicant; financial documentation for the qualifying parent; an approved Form I-130; and an Application for Immigrant Visa and Alien Registration (Form DS-230). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

The record reflects that on June 3, 2000, the applicant, then age 17, presented a photo-substituted Jamaican passport in the name of [REDACTED] to U.S. inspectors at John F. Kennedy International Airport to obtain admission to the United States. He was referred to secondary inspections, where his sworn statement was taken. The applicant indicated that his passport was not issued to him by the Jamaican government and his visa was not issued to him by the U.S. government. *See Record of Sworn*

Statement (Form I-867A), dated June 3, 2000. He also stated that his father is a U.S. citizen and his mother is a Jamaican citizen. *Id.* The applicant explained that his “father sent [him] money so that a guy could get [him] into the U.S.” *Id.* After the applicant was found to be age 18 or older based on a dental examination, he was expeditiously removed on June 5, 2000.

On appeal, counsel for the applicant contends that the applicant was a “17 year old child” when he misrepresented his identity and therefore should not be considered inadmissible. Counsel states that *Singh v. Gonzales*, 451 F.3d 400, 405-09 (6th Cir. 2006), stands for the proposition that a child is not legally capable of forming the intent to willfully defraud an immigration officer.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO will first address the question of whether the applicant is admissible to the United States.

Counsel asserts that the applicant lacked the legal capacity to make a willful misrepresentation because he was a minor. However, there is no statutory exception for minors to inadmissibility under section 212(a)(6)(C)(i) of the Act. Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. *See In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike section 212(a)(6)(C)(i), two other grounds of inadmissibility in section 212(a) contain express exceptions for minors. An exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. By comparison, section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of “any alien” who commits fraud or willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and the AAO cannot assume such an exception was intended. For this reason, the fact that the applicant was 17 when he made the material misrepresentations is not, by itself, enough to establish that he is not inadmissible.

Nor, however, is his age completely irrelevant. As the Supreme Court has noted, “A child’s age is far ‘more than a chronological fact.’ . . . It is a fact that ‘generates commonsense conclusions about behavior and perception.’” *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal citations omitted). Fraud consists of “false representations of a material fact made with knowledge of its falsity and with intent to deceive.” *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual “know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception.” *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. “The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.” *See Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999).

Therefore, when assessing a claim that an applicant lacked capacity to incur inadmissibility due to his or her minor age at the time of the misrepresentation, the adjudicator must weigh the totality of the

circumstances presented in the evidence of record and determine whether the applicant possessed the maturity and judgment to comprehend both the falsity, and the potential consequences of, a false statement. Based on this understanding, the AAO finds that an evaluation of whether an applicant who made a material misrepresentation while under the age of 18 possessed, at the time, the capacity to make a willful misrepresentation of a material fact must be the result of an individualized inquiry into that particular applicant's maturity level and ability to understand the nature and consequences of his false statement. The applicant bears the burden of demonstrating that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Therefore, he has the burden to prove that, when he made the material misrepresentations, he lacked capacity to willfully misrepresent a material fact.

In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her as fraudulent conduct "necessarily includes both knowledge of falsity and an intent to deceive" and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was "even further beyond the pale," than imputing a parent's negligence to that child. *Id.* at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17 year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. While the brothers contended that the immigration judge had erred by imputing their father's fraud to them, the court concluded that the brothers "given their ages at the time" were accountable for the misrepresentations. The court also indicated in its opinion that the BIA had previously acknowledged that while the brothers were young at the time their father filed for asylum, "they were old enough to know better and to be held accountable for their actions." 546 F.3d 890, 892-893 (7th Cir. 2008). In deciding the case, the Seventh Circuit specifically noted that young was a "relative term and that "[b]eing over 16 - and eligible for a driver's license - is quite different than being 10." *Id.*, at 892.

The age of the applicant in the present case mirrors that of the 17 year-old brothers in *Malik*. The applicant willingly presented a photo-substituted Jamaican passport to U.S. immigration authorities. Though the applicant's situation is unlike the situation of the Malik brothers in that their father initially misrepresented their identities to a U.S. government official and his did not, the record reflects that the applicant was aware that his passport was not issued to him by the Jamaican government and his visa was not issued to him by the U.S. government. See *Record of Sworn Statement (Form I-867A)*, dated June 3, 2000. The applicant knew his father gave him money to give to another person to get him into the United States. *Id.*

In his sworn statement, the applicant stated that his native language is English and that he understood everything being asked of him, in response to questions asked both at the beginning and at the end of his interview on June 3, 2000. With his appeal the applicant submits an affidavit in which he claims he was an "impressionable minor" at the time who followed most directives without question, and he asserts that he did not know how his visa was obtained. This statement must be considered in light of the applicant's sworn statement, in which he said he knew that his visa was not issued by the U.S. government and the Jamaican government did not issue his passport; in other words, he knew that his travel documents were not properly obtained. Additionally, in his affidavit he claims that he provided the U.S. inspector with the "information that was given to [him]," without explaining what that information was or who gave it to him. The record also includes an affidavit from the applicant's U.S.

citizen father, who asserts that the applicant was a child, doing only what he was instructed to do, when he attempted to enter the United States in 2000. The record includes no other details concerning the applicant's capacity to understand the consequences of his misrepresentation.

The evidence in the record does not establish that the applicant lacked the capacity to willfully misrepresent a material fact or to understand the consequences of his actions. He chose to use altered documents to seek entry into the United States. Though he asserts that his step-father made his travel arrangements, the record does not establish that the applicant's misrepresentations themselves should be attributed to someone else. His actions indicate that he was sufficiently mature to understand that he was misrepresenting his identity and using fraudulent documents. Accordingly, the applicant is subject to section 212(a)(6)(C)(i) of the Act despite the fact that he was a minor at the time of his attempted entry.

The AAO also finds that the applicant's misrepresentations were deliberate and voluntary. Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. *See Mwongera*, 187 F.3d at 330; *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Although the applicant was a minor when he presented the photo-substituted passport and visa to attempt to gain entry, the AAO finds that he was "old enough to know better and to be held accountable for [his] actions." *Malik v. Mukasey*, 546 F.3d 890, 892 (7th Cir. 2008). Despite his age the record establishes that the applicant knew he was presenting fraudulent documentation to enter the United States and that his presentation of this documentation was both voluntary and deliberate. Accordingly, we find that his misrepresentation of material facts was willful.

Counsel also asserts that because the applicant did not sign the Withdrawal of Application for Admission/Consular Notification Form (Form I-275), the form's validity is "doubtful," which makes his sworn statement questionable. However, counsel provides no legal authority for her assertions. Among the functions of Form I-275 is to document the authorization granted to aliens who are permitted to withdraw their applications for admission in lieu of expedited removal. Arriving aliens do not have an automatic right to withdraw their applications for admission; the Attorney General (now Secretary of Homeland Security, "Secretary") has the discretion to grant this permission. *See* 8 CFR § 235.4. The record reflects that the applicant did not sign Form I-275 in the section where aliens requesting permission to withdraw their applications for admission usually sign. He did, however, sign each page of his sworn statement on June 3, 2000. The record does not show that the applicant requested permission to withdraw his application for admission; it shows that he was ordered expeditiously removed. *See Form I-860, Notice and Order of Expedited Removal*, dated June 4, 2000.

The record indicates that the applicant personally presented a fraudulent passport in order to gain entry into the United States. The circumstances within which the applicant made his misrepresentation suggest that his misrepresentation was willful, and the evidence submitted is insufficient to find that he lacked the capacity to willfully misrepresent a material fact. The AAO therefore finds that the applicant's misrepresentation was willful.

The applicant's attorney also indicates, in the alternative, that the applicant's misrepresentation was not material because he would have otherwise been able to obtain a visa. A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered

material. *Kungys v. United States*, 485 U.S. 759, 771-72 (1988). The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for 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 result in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). The applicant's use of a photo-substituted Jamaican passport to obtain admission into the United States shut off a line of inquiry, which might have resulted in a finding of ineligibility. The applicant's misrepresentation renders him inadmissible under the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's parent is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior

medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO finds that the applicant has failed to establish that his qualifying parent will suffer extreme hardship as a consequence of his separation from him. The qualifying parent indicates that it “pains [him] that [his] plans for [the applicant’s] future may go up in smoke” because his mother’s boyfriend gave him a fake passport. However, other than this statement, the record provides little detail regarding the emotional hardships that the applicant’s parent is experiencing upon separation from the applicant. The evidence provided also fails to specifically address how the qualifying parent’s emotional hardships rise beyond the ordinary hardships associated with separation. No other hardships upon separation were addressed by the record. As such, the applicant failed to provide sufficient documentation to show that the qualifying parent is suffering hardships that constitute hardships beyond the common results of removal upon separation.

The AAO also finds that the applicant has not met his burden of showing that the qualifying parent, a native of Jamaica, would suffer extreme hardship if he relocated to Jamaica to live with the applicant. The applicant’s parent states that he has lived in the United States since 1988 and has family ties to the United States, including his U.S. citizen wife, his two children who live with their mothers, his U.S. citizen mother, his three sisters, his father-in-law and his step-grandchildren. However, no evidence corroborates his claims that these family members, with the exception of his wife, live in the United States, or shows that he has close relationships with them. The qualifying parent also asserts that he

financially supports many of these family members and assists in the care of his father-in-law and mother, who both have medical issues. However, the record lacks documentation supporting these assertions. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's parent contends that he and his family would suffer financial hardships if he relocated to Jamaica because "jobs in [his] field are nonexistent" and he still has "two minor children to support financially." The record does not support his assertions that he would be unable to find work as a construction worker. While the applicant submitted an article with his original waiver application indicating that Jamaica lost 21,200 jobs in the construction and agricultural sectors in October 2010, the evidence fails to demonstrate that his father would be unable to find work today. Further, the applicant's parent has not shown that he financially supports his two minor children and that he would be unable to do so from Jamaica. Similarly, the applicant's parent also indicates that if he returned to Jamaica his marriage would end, but the record includes no support for such assertions. *Matter of Soffici* at 165.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen parent as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.