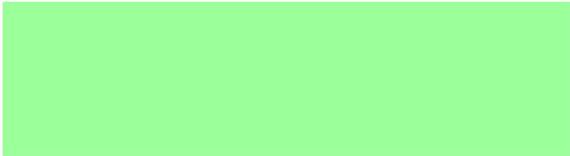




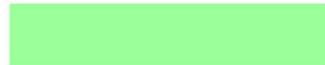
U.S. Citizenship  
and Immigration  
Services

(b)(6)



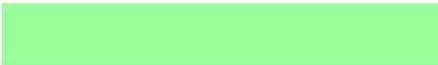
Date: JUN 14 2013

Office: MIAMI



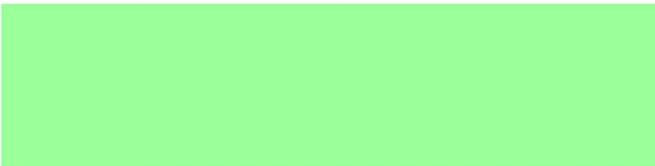
IN RE:

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 "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. As the applicant is not inadmissible, the waiver application is unnecessary and the appeal will be dismissed as moot.

The applicant is a native and citizen of Uruguay 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)(2)(A)(i)(I), for seeking admission into the United States by fraud or willful misrepresentation of a material fact. The applicant is married to a U.S. lawful permanent resident (LPR). On June 13, 2011, the applicant filed an Application for a Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. LPR wife.

In a decision dated August 5, 2011, the acting director noted that the applicant's inadmissibility was based on a sworn statement in which the applicant admitted that he "paid a Haitian person between \$350.00 to \$500.00 dollars for a fake I-130 form with [his] sister's signature and used her birth certificate to obtain a Florida Driving License from DMW." The acting director then denied the waiver application, finding that the applicant failed to establish that his qualifying relative wife would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel asserts that the applicant never knowingly sought any immigration benefit by fraud or willful misrepresentation. Counsel contends that "as the alleged fraud was not intended to gain a benefit under the immigration laws, the applicant is not thereby inadmissible under section 212(a)(6)(C)(i), and has no need of a waiver under section 212(i)." Counsel states that the record contains no evidence that the applicant knowingly made a willful misrepresentation to a United States Government official in procuring or seeking to procure either immigration documentation or admission into the United States.

The record includes, but is not limited to counsel's brief, sworn statements by the applicant, a marriage certificate, a copy of the applicant's wife's lawful permanent resident card, and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering 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.

The Board of Immigration Appeals (Board) has found that a misrepresentation made in connection with an application for visa or other documents is material if either: (a) the alien is excludable on the true facts, or (b) 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 be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961). The requirement of willfulness under section 212(a)(6)(C) of the Act is satisfied if it is established that the alien had knowledge of the falsity of his statement when made. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The record reflects that on February 16, 2000, the applicant was admitted into the United States as a visa waiver visitor for pleasure, with authorization to remain until May 15, 2000. The record shows that the applicant has remained in the United States since that time. The record further reflects the applicant's testimony that in an attempt to renew his Florida driver's license, he paid a group of individuals who, on November 26, 2007, filed a Form I-130, Petition for Alien Relative, listing the applicant as the beneficiary and falsifying the signature of the applicant's sister, who was listed as the petitioner. The Form I-130 listed the same street address for the applicant and his sister, which is also the applicant's current address of record. The applicant claims that he then received an envelope in the mail which he gave to the individuals. They then escorted him to the DMV, where he received a driver's license after a DMV employee review the contents of the envelope. Subsequently, on February 5, 2010, USCIS sent the applicant's sister a request for further evidence, particularly birth certificates for her and the applicant, the marriage certificate of their parents and a copy of the naturalization certificate for the applicant's sister. USCIS denied the Form I-130 for abandonment on June 18, 2010 after no response was received. The applicant claims that it was only after being confronted with the evidence of the Form I-130 filing during his April 13, 2011 adjustment of status interview that he learned of what the individuals had done. In an affidavit taken by an Oakland Park Immigration Services Officer dated April 13, 2011, the applicant swears under oath that the signature of the petitioner in page 2, Part E of the Form I-130 is neither his nor his sister's.

As the record reflects that the applicant had previously obtained a Florida driver's license, we infer from the circumstances that the applicant was aware of the proper procedure for seeking a renewal of his driver's license. We find it likely that the applicant was also aware that due to changing requirements, his lack of lawful immigration status would prevent him from renewing the driver's license. We find this to be the probable reason he sought assistance outside the normal lawful channels. However, the extent of the applicant's knowledge of the particulars of the scheme whereby he would obtain the license by presenting an USCIS receipt notice at the DMV, including the submission of a Form I-130 petition to USCIS to obtain that notice, is not conclusively demonstrated in the record.

We note first that a Florida driver's license is not issued by the USCIS, and we are aware of no legal authority holding that a state-issued driver's license is properly considered an immigration benefit. Neither do we consider employees of the Florida DMV to be officials of the United States government. See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994) (finding the applicant not inadmissible because "[t]he record contains no evidence that the applicant practiced fraud or made a willful misrepresentation to a United States Government official").

Therefore, the issue is whether the submission of the Form I-130 to USCIS in this case supports a finding of fraud or willful misrepresentation. Given that the applicant's apparent sole objective was renewal of his driver's license, we find it unlikely that the applicant could have intended to deceive USCIS into approving the Form I-130, which was filed without appropriate supporting

documentation and could not have been approved. A misrepresentation is generally material only if by it the alien received or could have received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). The applicant was manifestly ineligible for an immigrant visa in the category of the brother of a U.S. citizen. The submission of the Form I-130 appears to have been intended only to acquire the receipt notice from filing. We are unaware of any authority holding that a receipt notice constitutes, in and of itself, a "visa, other documentation, or admission into the United States or other benefit provided under" the Act.

Nevertheless, we will not reach that issue as there is insufficient evidence to support that any fraud or material misrepresentation was willful. In *Matter of G-G-*, the Board determined that for a statement to be considered a willful misrepresentation, it "must be made with knowledge of its falsity . . . so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled." 7 I&N Dec. 161, 164 (BIA 1956). Although we acknowledge that the circumstances do raise questions as to the applicant's claim of complete ignorance, a determination of willfulness in this case would be based on inferences not adequately supported by the record. The record contains a statement by the applicant indicating that he was unaware of the exact methods used by the individuals he hired to secure the renewal of his Florida driver's license, and specifically the submission of the Form I-130 to USCIS. We find that the circumstances support an inference that the applicant knew that these methods were illegal or otherwise improper. Given that the applicant received an envelope presumably bearing a USCIS return address, we might even infer that he likely knew that USCIS was implicated in some manner. However, the circumstances do not alone support the more specific inference that the applicant knew a Form I-130 (or any other specific form) had been filed listing him as beneficiary, that this form contained a false signature of his sister as the petitioner, or that the envelope he subsequently received contained a receipt notice associated with this filing. There is no evidence that the applicant submitted or signed the Form I-130 himself. Absent evidence to the contrary, the AAO cannot conclude that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Per the Supreme Court's holding in *Kungys v. United States*, a finding of willful misrepresentation of a material fact rendering an alien inadmissible under section 212(a)(6)(C)(i) must be based on "clear, unequivocal, and convincing evidence." See *Kungys v. United States*, 485 U.S. at 771-72. Based on the evidence in the record, the applicant is not required to file a section 212(i) waiver.

Beyond the decision of the acting field office director, the AAO notes that on August 21, 2006, the applicant was convicted in the [redacted] County Court of misdemeanor stalking in violation of section 784.048(2) of the Florida Statutes. The maximum punishment for this offense, a first degree misdemeanor, is a definite term of imprisonment not exceeding one year. See Florida Statutes § 775.082. The applicant was placed on probation for a period of 12 months and was ordered to pay court costs and fees. In the event that the AAO found this to be a crime involving moral turpitude, it would find the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act to apply as the maximum sentence for the crime does not exceed one year and he was not sentenced to a term of imprisonment in excess of six months.

(b)(6)

Page 5

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. *See* Section 291 of the Act, 8 U.S.C., § 1361. Here, the applicant is not required to file a waiver. Accordingly, the appeal will be dismissed as the current record does not support inadmissibility and the waiver application is unnecessary.

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