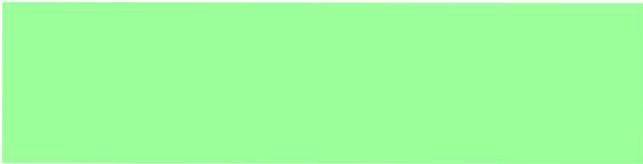




U.S. Citizenship  
and Immigration  
Services

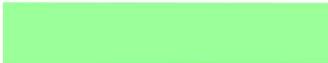
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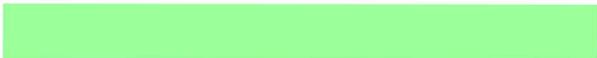
**JUN 24 2013**

Office: ANAHEIM



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:

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*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico. The appeal will be remanded to the field office director for further proceedings consistent with this decision.

The applicant is a native and citizen of Mexico 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant 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 to reside in the United States with her lawful permanent resident spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 15, 2012.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred in determining she was inadmissible for seeking admission to the United States on June 9, 1981 by misrepresenting her true identity. The record contains statements from the applicant and her spouse; medical documentation for the spouse; financial documentation for the applicant and for her spouse; country information for Mexico; and letters of support from family and friends.

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.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 ....

With respect to the finding of inadmissibility under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation, the field office director found that records reveal in June 1981 the applicant presented a valid border crossing card at San Ysidro, California, Port of Entry, seeking admission to the United States while misrepresenting her true identity. Service records indicate that in June 1981 the applicant applied for a six-month permit while carrying an I-186 Border Crossing Card issued in 1979 listing her name as [REDACTED] with a birth date of September

8, 1960. An immigration inspector discovered the applicant had in her possession a card from a Los Angeles County – [REDACTED] in the name of [REDACTED] with a birth date of August 8, 1960. Records indicate the applicant stated that the card belonged to a cousin. She also had in her possession an appointment card from [REDACTED], where the inspector called and was informed that only residents of the United States could qualify for aid. Records show the applicant stated that she had been going there and did not pay for service. The inspector recommended cancellation of the applicant's BCC. Based on this information the field office director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

The applicant contends the clinic card she carried contained her married name at that time, but it was incorrectly spelled, and the date of birth was also incorrect, an error she did not notice at the time. She asserts that her statement at that time that the card belonged to a cousin was a misunderstanding because she was questioned in English and did not understand what she signed. She further contends she never denied her true identity and believes the confusion may have come from the BCC containing her maiden name while the medical card carried her married name. The applicant further states that when she was given the medical card, which she asserts was for benefits for her U.S.-born daughter, she gave the clinic her married name of [REDACTED]. With her statement the applicant submits a translated marriage certificate of her 1977 marriage to [REDACTED].

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 *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . 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 have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The record indicates that on June 7, 1981, the applicant presented a valid, properly issued BCC that carried her maiden name. The immigration inspector, after discovering that the applicant carried cards from health clinics in the United States, recommended cancellation of her I-186 BCC not because of a misrepresentation, but because it was deemed the applicant was "receiving medical attention intended for the U.S. indigent..." and was inadmissible under former section 212(a)(15) of the Act (now section 212(a)(4)(A) of the Act), as a person likely to become a public charge. There was no finding that the BCC she presented belonged to another individual. Further, had the

applicant misrepresented her identity to obtain a health clinic card, this would not render her inadmissible as it provided her no immigration benefit. The health card, although carrying a name, was not a government-issued identity document and the applicant did not present the document in an effort to gain entry to the United States or any other benefit under the Act.

The record shows that the applicant was issued subsequent B1/B2 visas and BCCs after being denied admission in 1981, making multiple entries to the United States. The applicant was not refused entry to the United States until November 2009 when an immigration inspector determined she had not established residency in Mexico, cancelled the applicant's BCC, and allowed her to withdraw her application for admission and return voluntarily to Mexico. At that time, the applicant had in her possession documentation of addresses she uses in the United States, one that she contended was for business purposes and one because she supports her U.S.-citizen daughter, but no documentation establishing an address in Mexico. She subsequently submitted documentation of her residence in Mexico when she applied for an immigrant visa.

Based on the record, it appears the applicant was not refused entry for seeking admission to the United States through fraud or material misrepresentation on June 7, 1981, but rather was found to be a person likely to become a public charge. Further, even if she had misrepresented her identity to receive medical care in the United States, this would not render her inadmissible as it does not constitute a benefit under the Act. The AAO therefore remands the matter to the field office director to determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. If, upon review of the record, the field office director determines the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, a new decision on the merits of the waiver application shall be issued providing a detailed explanation of the fraud or misrepresentation committed. If that decision is adverse to the applicant, it will be certified for review to the AAO. If after further review the field office director finds that the applicant did not commit fraud or misrepresentation in order to obtain admission to the United States, the applicant shall be found to be admissible and the waiver application deemed unnecessary.

**ORDER:** The matter is remanded to the field office director for further examination of the applicant's inadmissibility as noted above.