(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 08 2013 OFFICE: SANTO DOMINGO, D.R. 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is not necessary.

The record reflects the applicant is a native and citizen of the Dominican Republic 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 having sought to procure a visa through willful misrepresentation. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant contests the finding of inadmissibility, but seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his father and siblings in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 7, 2012.[1]

On appeal, the applicant asserts the U.S. Citizenship and Immigration Services (USCIS) should vacate the denial of his wavier application as his U.S. citizen father, and not his deceased mother, is his qualifying relative and at the time his father submitted an I-130 petition on his behalf, he was unmarried. *See* Form I-290B, Notice of Appeal or Motion, dated September 5, 2012.

The record includes, but is not limited to: a letter of support from the applicant's father and siblings as well as identity, divorce, and birth documents.[2] The entire record, with the exception of the Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

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

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[1] The AAO notes the Field Office Director's decision erroneously indicates the applicant's U.S. citizen mother filed a waiver application based on extreme hardship on April 24, 2012. As the record demonstrates the applicant's qualifying relative is his U.S. citizen father, and not his deceased mother, the AAO finds the Field Office Director's error to be harmless.

[2] The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As a certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

> (i) In general.- 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.
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> ...
>
> (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now the USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

> A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
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> 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 record reflects the applicant's father initially filed a Form I-130 around April 11, 1990, identifying the applicant as his unmarried son. The record also reflects the applicant's father filed a subsequent Form I-130 on December 7, 2004, identifying the applicant as his unmarried son who was never married. However, the record establishes the applicant married [redacted]

on April 9, 1983, and divorced her about February 20, 1987.[3] The applicant indicated on his Form I-601 and in his statement in support of his appeal that his father was unaware of his marriage and subsequent divorce when his father initially filed Form I-130 around April 11, 1990.

Based on the record, the AAO finds the applicant's father may not have been aware of the applicant's marriage and divorce to upon filing the initial Form I-130. And, even if the applicant's father were aware of the marriage and divorce upon filing the subsequent Form I-130 and failed to indicate such, the misrepresentation was committed by the applicant's father and not the applicant. Moreover, the record reflects the applicant was divorced when the initial and subsequent I-130 petitions were filed. Accordingly, the misrepresentation is not material given the true facts, i.e., the applicant was unmarried at the time his father filed the I-130 petitions, and the applicant's father's misrepresentation did not shut off a line of inquiry that was relevant to the applicant's eligibility and that might well have resulted in a proper determination that he be found inadmissible.

Accordingly, the AAO finds the applicant did not commit fraud or willfully misrepresent any material fact, and he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible, and the Field Office Director's finding regarding fraud and misrepresentation under section 212(a)(6)(C) of the Act will be withdrawn. The waiver application filed pursuant to section 212(i) of the Act is therefore not necessary.

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 212(i) of the Act, 8 U.S.C. § 1182(i). Here, the applicant is not required to file for a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the waiver application is not necessary.

ORDER: The applicant's waiver application is declared unnecessary and the appeal is dismissed.

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[3] The AAO notes the record is unclear concerning the exact day of the applicant's divorce as additional evidence in the record indicates the applicant and were divorced on February 22, 1987.