



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: OCT 01 2013 OFFICE: BALTIMORE

FILE: [Redacted]
[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:

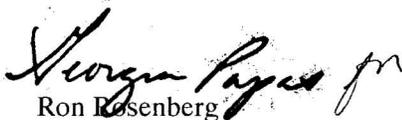
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Thank you,



Ron Eisenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application. The applicant, through counsel, appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The record reflects 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 having sought to procure admission to the United States through willful misrepresentation. The District Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO dismissed the applicant's appeal and affirmed the District Director's decision.

On motion, counsel contends the applicant's use of a false name and date of birth after her entry into the United States is not material, as she did not gain any benefit under the Act. Counsel also contends that though the applicant may have been excludable or inadmissible on the true facts, she did not gain admission or entry as a result of her misrepresentations.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has established reasons for reconsideration, the motion to reconsider will be granted.

The record includes, but is not limited to: briefs, motions, and correspondence from current and previous counsel; letters of support; identity, employment, and financial documents; photographs; and documents on conditions in El Salvador. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

...

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

A misrepresentation is generally material only if the alien received a benefit for which she 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). 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*, 485 U.S. at 771-72. 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 have resulted 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 record reflects that on November 12, 1992, the applicant entered the United States without inspection, and subsequently that day, U.S. immigration officials apprehended her near El Paso, Texas. Upon apprehension, the applicant represented her name as [REDACTED] and indicated that she was born on July 16, 1975. The immigration officials charged the applicant with deportability pursuant to former section 241(a)(1)(B) of the Act, for having entered the United States without inspection. The District Director concluded the applicant was inadmissible for fraud or misrepresentation of a material fact pursuant to section 212(a)(6)(C)(i) of the Act, based on her having misrepresented her name and date of birth to U.S. immigration officials, and the AAO affirmed the District Director's decision.

On motion, the AAO finds that, although the applicant did not give immigration officials her correct name and date of birth upon apprehension, no evidence in the record indicates her misrepresentations were made to procure a visa, other documentation, admission, or another benefit under the Act, or that this false information had an impact on her eligibility to enter the United States. She did not attempt to obtain a visa or any other documentation from immigration officials, nor was she seeking to be admitted into the United States, as she was already in the country after having entered without inspection. Furthermore, in giving a false name and date of birth to immigration officials who were asking her about her immigration status, the applicant was not requesting any benefits under the Act, and there is no indication that immigration officials would have allowed her to remain in the United States had they been deceived by her false name and date of birth.

Based on the record, the AAO finds that the applicant's misrepresentations of her name and date of birth after she had entered the United States without inspection were not material, and she is not inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's waiver application is thus unnecessary.

In proceedings for an 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 inadmissible and therefore not required to file the application. Because the waiver application is unnecessary, the appeal is dismissed.

ORDER: The motion is granted. The prior AAO decision is withdrawn. The appeal is dismissed as the underlying waiver application is unnecessary.