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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 2 1 2015 OFFICE: CHICAGO FILE:

IN RE:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained as the applicant is not inadmissible and the waiver application is unnecessary.

The applicant is a native and citizen of Mexico 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 procuring entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The Field Office Director determined that the applicant is not eligible for a waiver under section 212(i), as he failed to demonstrate extreme hardship to a qualifying relative upon denial of his waiver application, and denied the applicant's waiver application accordingly. *See Decision of the Field Office Director*, dated April 4, 2014.

On appeal, filed on April 30, 2014 and received by the AAO on November 17, 2014,counsel for the applicant asserts that the applicant was unaware that he had been ordered deported and his legal permanent residence status terminated prior to his entries to the United States with his Form I-551, so that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and does not require a section 212(i) waiver of inadmissibility.

In support of the waiver application and appeal, the applicant submitted letters from himself and his family members, a psychological evaluation of his spouse, financial documentation, identity documents, background country conditions for Mexico, medical documentation concerning his spouse and educational documentation for his sons. 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) 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:

> (1) 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 immigrant 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...

The record reflects that the applicant became a lawful permanent resident of the United States on April 25, 1990. When the applicant began his employment for a chocolate factory, he used the name of another individual, along with a fraudulent green card in the same name. Immigration officials encountered the applicant at work and issued an Order to Show Cause to the applicant on May 3, 1995, under the name of The applicant was ordered deported in absentia by an immigration judge on November 8, 1995, effectively terminating the applicant's lawful permanent resident status. The applicant departed from the United States in 1996, with the effect of self-executing the deportation order. Despite the termination of his lawful permanent resident status, the applicant subsequently used a legitimately issued Form I-551, permanent resident card in his own name, to travel to Mexico and return to the United States on six occasions.

The applicant acknowledges that he made misrepresentations concerning his identity to immigration officials at his former place of employment in 1995. However, the applicant asserts that that he did not receive any benefit under the Act due to this misrepresentation, so that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964).

The Field Officer Director did not find the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act on the basis of the applicant's misrepresentations to immigration officials at his place of employment in 1995. Rather, the applicant was determined to be inadmissible based upon his awareness that he had been placed into immigration proceedings under a false identity and ordered deported, but continued to travel between Mexico and the United States.

Counsel for the applicant asserts that the applicant was not aware that he had been ordered deported or that his lawful permanent residence status had terminated on November 8, 1995. Counsel indicates that the applicant was admitted to the United States pursuant to his Form I-551 on five occasions after his status terminated, until he was paroled into the United States for removal proceedings on his last entry. The applicant asserts that he believed that he retained his lawful permanent residence status, especially as he renewed his lawful permanent resident card in 2000, receiving a new card valid until November 15, 2010.

U.S. Citizenship and Immigration Services interprets the term "willfully" as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from

admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). Nevertheless, as the burden is on the applicant to establish that he or she is not inadmissible, the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* section 291 of the Act, 8 U.S.C. § 1361.

The applicant acknowledges that he was aware that he was placed into immigration proceedings in the false name he provided to immigration officers in 1995. The record contains an Order to Show Cause issued to dated May 3, 1995, ordering the applicant's appearance at a court date on November 8, 1995. The Order to Show Cause indicates that it was read to the applicant in Spanish and signed by the applicant. However, the applicant failed to appear in court on the ordered date and was ordered deported in absentia by an immigration judge on November 8, 1995.

The record contains evidence that letters from the Immigration and Naturalization Service (INS) sent to the applicant's false name, , at the address provided by the applicant, went unclaimed. The United States Postal Service indicated to the INS that no individual named was known at the given address.

The applicant's lawful permanent resident status terminated upon entry of his final administrative order of deportation, on November 8, 1995. 8 C.F.R. § 1.1(p). The termination of the applicant's lawful permanent resident status is by operation of regulation; there is no indication that the applicant was personally notified concerning the termination of his lawful permanent resident status or that he was even in receipt of his order of deportation. It is acknowledged that the average person is likely unaware of the contents of Title 8 of the Code of Federal Regulations and there is no indication that the applicant was represented by an immigration attorney prior to being issued a Notice to Appear on April 29, 2003. It is also acknowledged that subsequent to his order of deportation, the applicant renewed his Form I-551 and gained entry to the United States with this document on multiple occasions. Accordingly, the record supports the applicant's assertion that he did not willfully misrepresent his immigration status upon entering the United States between 1996 and 2003 with his Form I-551. The evidence establishes that the applicant did not willfully misrepresent a material fact to procure entry to the United States and is not subject to inadmissibility pursuant to section 212(a)(6)(C) of the Act. [1] He, therefore, does not require a waiver of inadmissibility under section 212(i) of the Act

[1] However, in a Notice to Appeal, issued April 29, 2003, the applicant was charged with removability under section 212(a)(9)(A)(ii) for seeking admission to the United States within ten years of his departure or removal under section 240 of the Act. The applicant was ordered deported in absentia by an immigration judge on November 8, 1995 and the applicant departed from the United States in 1996. The applicant asserts that he is no longer inadmissible under this section, as ten years have elapsed between his 1996 departure and his application to adjust status. But, as the record reflects that the applicant failed to remain outside of the United States for ten years after his self-deportation in 1996, he is still inadmissible under section 212(a)(9)(A)(ii) of the Act. *See 8 C.F.R. § 212.2(a)* (stating that any alien who has been deported from the United States and is applying for adjustment of status must present proof that he has remained outside of the United States for the time period required for re-entry after deportation). Accordingly, the applicant is required to file a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained and the waiver application is no longer necessary.