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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 2 7 2015 OFFICE: CHICAGO FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois and the matter is before the AAO on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The applicant is a native and citizen of Bulgaria 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 procured a benefit under the Act through fraud or 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 reside in the United States with his U.S. citizen spouse.

On July 28, 2014, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and did not demonstrate extreme hardship to a qualifying relative as a result of his inadmissibility. The waiver application was denied.

On appeal, the applicant states that the Field Office Director erred in denying the application for a waiver of inadmissibility as the applicant established extreme hardship to his U.S. citizen spouse. The applicant also states that the Field Office Director did not establish that the applicant was inadmissible under section 212(a)(6)(C)(i).

In support of the waiver application, the record includes, but is not limited to: briefs from the applicant, biographical information for the applicant, his spouse, his child and his stepchildren; photographs; financial information for the applicant and spouse including documentation of income and expenses; information regarding the applicant's spouse's psychological health; statements from family and friends of the applicant and his spouse; country conditions information concerning Bulgaria; and documentation of the applicant's immigration history in the United States.

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 was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.
>
> ...

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act as a result of fraud or misrepresentation in connection with the Form I-129, Petition for a Nonimmigrant Worker, filed on his behalf by which was revoked for fraud on June 2, 2008. The record indicates that the petitioner pled guilty to

federal visa fraud charges based on I-129 petitions filed on behalf of the applicant and others. We must turn to whether the record demonstrates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act based on the petitioner's filing of the fraudulent I-129 petition on his behalf, which contained false representations or misrepresentations.

The Board of Immigration Appeals (Board or BIA) held that the term "fraud" in the Act "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). To constitute a fraud, an alien must have made a false representation of a material fact, with knowledge of its falsity and with intent to deceive a government official, and the misrepresentation must have been believed and acted upon by the official. *Id.* It is not clear from the record at this time that the applicant made a false representation of material fact, as the Form I-129 was filed and signed by the petitioner, not the beneficiary.

Additionally, a misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *See Kungys v. United States,* 485 U.S. 759, 7771-71 (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 record also fails to indicate that the applicant made a willful misrepresentation of a material fact in connection with the fraudulent Form I-129 filed on his behalf.

As such, there is not sufficient evidence in the record that the applicant committed fraud or made a material misrepresentation "to procure…a visa, other documentation, or admission into the United States or other benefit provided under this Act." The record does not demonstrate that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact.

The applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore does not require a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the applicant is not inadmissible.

ORDER: The appeal is dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.