



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **JUL 28 2015**

FILE: [REDACTED]

APPLICATION RECEIPT: [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]  
LAW OFFICES OF MICHAEL J. COUGHLIN, P.A.  
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Honolulu, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying application is unnecessary.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for misrepresenting her daughter's country of birth to facilitate and expedite the issuance of her daughter's immigrant visa. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that her U.S. citizen spouse filed on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her family.

The Field Office Director concluded that the applicant did not establish that her qualifying spouse would suffer extreme hardship if she were not allowed to remain in the United States and denied the application accordingly. *See Decision of Field Office Director*, dated August 19, 2014.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in finding the applicant inadmissible, because the true facts would not have rendered her inadmissible. Alternatively, the applicant asserts that the Field Office Director misinterpreted and misapplied the relevant facts and law in her decision.

The record includes, but is not limited to, a brief; identity and relationship documents; statements from the applicant and her daughter; medical records; financial records; photographs; school records; and reports about the Philippines. 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)(1) of the Act provides:

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

In the present case, the record reflects that the applicant entered the United States on a B-2 nonimmigrant visitor's visa on March 18, 2006. At her interview conducted in connection with the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant told the interviewing officer that her U.S. citizen daughter had been born in the Philippines. The applicant later admitted that her daughter had in fact been born in Italy.

In her decision denying the applicant's Form I-601, the Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, because the applicant intentionally misrepresented her daughter's country of birth. The applicant, through counsel, contests the finding of inadmissibility, claiming her misrepresentation, while intentional, was harmless and not material.

A misrepresentation is generally material only if by 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); *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* at 771-72. The BIA has held that a misrepresentation made in connection with an application for a 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 [she] be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

In addition, "materiality" is defined in 9 F AM 40.63 N6.1, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The [Secretary] has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be 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: (1) The alien is inadmissible 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 or she be inadmissible." (*Matter of S- and B-C-*, 9 I&N 436, at 447.)

The applicant's misrepresentation about her daughter's country of birth is not material, because the

applicant would not have been inadmissible, removable or ineligible on the true facts, that her daughter was born in Italy, not the Philippines. Moreover, her misrepresentation did not cut off a line of inquiry, which would have been relevant to her eligibility and which might well have resulted in a proper determination that she was inadmissible. The Field Office Director has not shown, and the record does not reflect, how the applicant would have been inadmissible on the true facts or how this misrepresentation shut off a line of inquiry relevant to the applicant's eligibility for permanent resident status.

The Field Office Director's determination that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act is withdrawn. Therefore, her waiver application is unnecessary, and it is not necessary to address whether she established extreme hardship to her qualifying spouse pursuant to section 212(i) of the Act.

In the present case, the record does not establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

**ORDER:** The application for waiver of inadmissibility is declared unnecessary and the appeal is dismissed.