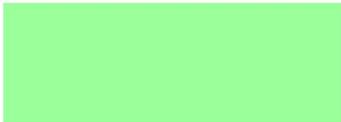




U.S. Citizenship  
and Immigration  
Services

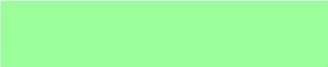
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DATE: **MAR 20 2015**

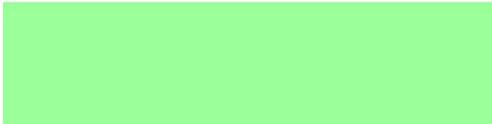
OFFICE: CHICAGO

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois denied the waiver application and 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 waiver application is unnecessary.

The applicant is a native and citizen of [REDACTED] who was found to be inadmissible to the United States under 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 entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his parents in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and does not merit a finding of discretion, and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated June 12, 2014.

On appeal, counsel asserts that the applicant cannot be found inadmissible to the United States under section 212(a)(6)(C)(i) because he was twelve years of age at the time he was purported to have engaged in misrepresentation to enter the United States. Counsel further asserts that the alleged misrepresentation was not material in nature and the applicant did not attend the consular interview resulting in the issuance of his visitor visa.

In support of the waiver application and appeal, the applicant submitted identity documents, a letter from the applicant, a letter of support, an affidavit from the applicant's father, documents from the applicant's school, documentation of the applicant's and his father's participation in the wrestling team and background country conditions concerning [REDACTED]. 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:

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 on June 3, 2010, at the time the applicant was eleven years of age, an online nonimmigrant visa application, Form DS-160, was submitted in the applicant's name. The applicant's Form DS-160 stated that the applicant's mother was not in the United States at the time of submission. However, the record reflects that the applicant's mother was residing in the United States on June 3, 2010.

When assessing a claim that an applicant lacked capacity to incur inadmissibility due to his or her minor age at the time of the misrepresentation, the adjudicator must weigh the totality of the circumstances presented in the evidence of record and determine whether the applicant possessed the maturity and judgment to comprehend both the falsity, and the potential consequences of, a false statement. Based on this understanding, we find that an evaluation of whether an applicant who made a material misrepresentation while under the age of 18 possessed, at the time, the capacity to make a willful misrepresentation of a material fact must be the result of an individualized inquiry into that particular applicant's maturity level and ability to understand the nature and consequences of his false statement. The applicant bears the burden of demonstrating that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. It is noted that the U.S. Department of State Foreign Affairs Manual, which we find to be instructive though not binding, indicates that an alien under the age of fifteen cannot act willfully and therefore cannot be found ineligible under section 212(a)(6)(C)(i) of the Act. 9 FAM 40.63 N5.3.

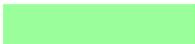
The applicant's father submitted an affidavit stating that he applied for the applicant's visa at the U.S. Consulate in [REDACTED] at the time his son was eleven years old. The applicant's father asserts that the applicant was not involved in his application process, as he was not even aware that an application had been filed for him. The applicant's father also contends that only he and the applicant's maternal grandmother attended the visa interview.

The applicant submitted a letter stating that he was completely unaware that a visa application was filed for him in 2010, did not know who filed it or how it was done. The applicant further asserts that he did not sign anything, nor was he ever present in the U.S. consulate. The information in the record supports the applicant's assertion that he did not attend his visa interview. Fraudulent conduct "necessarily includes both knowledge of falsity and an intent to deceive" and there is no indication that the applicant had knowledge of the misrepresentations made by his father or formulated the intent to deceive. *Singh v. Gonzales*, 451 F.3d 400, 407 (6th Cir. 2006). As such, the applicant has satisfied his burden of demonstrating that he did not willfully misrepresent a material fact to procure a visa to the United States.<sup>1</sup>

Accordingly, we find that the applicant did not engage in fraud or willful misrepresentation that would render him inadmissible section 212(a)(6)(C)(i) of the Act. Therefore, the Field Office Director's decision will be withdrawn.

<sup>1</sup> As we have determined that the applicant did not make a willful misrepresentation in procuring a visa to the United States, we will not address counsel's assertions concerning the materiality of the misrepresentation.

(b)(6)



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**ORDER:** As the applicant is not inadmissible, the waiver application is deemed unnecessary. The appeal is dismissed and the matter is returned to the Field Office Director for further proceedings.