



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-N-Z-

DATE: OCT. 23, 2015

APPEAL OF HONOLULU FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of the Philippines, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Honolulu Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant 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 procuring admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen children.

In a decision dated March 14, 2014, the Director determined that the Applicant was ineligible for a waiver because she had not established that she had a qualifying relative for purposes of a waiver under section 212(i) of the Act. The waiver application was denied accordingly.

On appeal, filed on April 9, 2014, and received by us on April 24, 2015, the Applicant asserts that her misrepresentation in obtaining a B-1 visa was not material and that her now-deceased spouse continues to be a qualifying relative. With the appeal the Applicant submits a brief and a news article. The entire record was reviewed and considered in rendering this decision.

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.

On appeal the Applicant contends that she is not inadmissible for fraud or misrepresentation. She maintains that although she stated that she was single when she was in fact married when she applied for a B-1 nonimmigrant visa in October 1986, the misrepresentation was not material as she was otherwise eligible for a nonimmigrant visa. The Applicant asserts that whether she was single or

married was immaterial to the qualifications for a B-1 visa and she would have been eligible even if she had stated that she was married.

The principal elements of a misrepresentation that render an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The U.S. Department of State Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By misrepresenting that she was single on her October 1986 nonimmigrant visa application when she was in fact married, the Applicant cut off a consular line of inquiry that would have revealed significant ties to the United States, namely, a spouse who was pursuing permanent residence in the United States as the unmarried son of a permanent resident. Such knowledge could well have led to further questions regarding the Applicant's ties to her native country and her intentions in the United States and could have affected the consular officer's decision to approve the Applicant's nonimmigrant visa application. The record therefore supports the Director's determination that the Applicant procured a nonimmigrant visa and admission through fraud or willful misrepresentation of a material fact. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

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 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 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 Director determined that the Applicant had not established she had a qualifying relative as required under section 212(i) of the Act. The Applicant asserts that her now-deceased spouse is still a qualifying relative.

Section 204(l) of the Act states:

l) Surviving Relative Consideration for Certain Petitions and Applications-

(1) IN GENERAL- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was--

- (A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));
- (B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);
- (C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));

(b)(6)

*Matter of L-N-Z-*

- (D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;
- (E) an alien admitted in 'T' nonimmigrant status as described in section 101(a)(15)(T)(ii) or in 'U' nonimmigrant status as described in section 01(a)(15)(U)(ii); or
- (F) an asylee (as described in section 208(b)(3)).

In the present case the record does not establish that Applicant was the beneficiary of a pending or approved immediate relative visa petition or family-based visa petition immediately prior to the death of her spouse. The record shows that the Applicant's spouse died on [REDACTED], 2012, and the Applicant's daughter subsequently filed Form I-130 on behalf of the Applicant on July 20, 2012. Nor does the record establish that prior to her husband's death, the Applicant was a derivative beneficiary of a pending or approved employment-based visa petition, the beneficiary of a pending or approved refugee/asylee relative petition, that she was admitted in 'T' or 'U' nonimmigrant status, or that she is a derivative asylee. The Applicant thus does not qualify for relief under section 204(l) of the Act. Because the Applicant does not have a qualifying relative, she is ineligible to seek a waiver under Section 212(i) of the Act.

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 not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-N-Z-*, ID# 14079 (AAO Oct. 23, 2015)