



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

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

MATTER OF A-K-

DATE: SEPT. 21, 2015

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Sierra Leone, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Washington 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 attempting to procure permanent residence, and for procuring ancillary benefits under the Act, 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.

The Field Office Director concluded that as the Applicant did not have a United States citizen or lawful permanent resident spouse or parent, he was statutorily ineligible for a waiver of inadmissibility pursuant to section 212(i) of the Act. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director* dated December 8, 2014.

On appeal the Applicant contends that USCIS erred in denying his waiver application, that he did not make any willful misrepresentation, and that the application to waive grounds of inadmissibility is unnecessary. With the appeal the Applicant submits a brief. 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 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 record reflects that on April 11, 2005, the Applicant submitted a Form I-687, Application for Status as a Temporary Resident, pursuant to the terms of the CSS/Newman (LULAC) settlement agreement, and on June 5, 2006, USCIS received the Applicant's request to withdraw that application.

On March 4, 2014, the Applicant submitted the Form I-485, Application to Register Permanent Residence or Adjust Status. The record indicates that at his May 30, 2014, adjustment of status interview, although the Applicant was not asked specifically about a legalization application, he was asked if he had ever committed fraud or misrepresentation to obtain an immigration benefit, and the Applicant stated that he had submitted an application with false information in order to obtain a residence card. On May 30, 2014, a Request for Additional Evidence was issued to the Applicant requesting the Form I-601. In an affidavit dated June 23, 2014, submitted with Form I-601, the Applicant admitted that his Form I-687 was completed by another person, that it contained false information, that the Applicant wanted to obtain work authorization through the application, and that he had been told to tell USCIS that he had initially entered the United States in 1981 and then reentered in 1990. The Applicant maintains that when he got a notice of intent to deny the Form I-687 application, his conscience would not allow him to continue so he hired an attorney and withdrew the application.

On appeal, the Applicant contends that he did not intentionally or willfully provide false information to USCIS to gain an immigration benefit and that as he withdrew the application there is no ground of inadmissibility to waive. The Applicant states that the Field Office Director's decision cites *Injeti v USCIS*, 737 F.3d 311 (4<sup>th</sup> Cir. 2013), but asserts that this case is inapplicable to him because it involved an application for naturalization rather than registration as a permanent resident and that it concerned misrepresentations made intentionally and in connection with a successful application. The Applicant contends that he did nothing intentional as the application was not explained to him and that he did not even have the information used in the application.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. The issue here is whether the false information the Applicant provided in support of his application for temporary residence constitutes a willful misrepresentation of a material fact that would render him inadmissible under section 212(a)(6)(C)(i) of the Act. 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.

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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) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). If an attempt to obtain a benefit was not successful, the Applicant would still be inadmissible for having “sought to procure” the immigration benefit by willful misrepresentation.

Based on the record we find the Applicant’s assertion that he is not inadmissible as he did not willfully provide incorrect information to be unpersuasive. An applicant is responsible for the information provided in connection with an application for a benefit. The Applicant states that at his interview based on his Form I-687 application, rather than providing accurate information, he testified to information that he knew was incorrect.

The Applicant also asserts he is not inadmissible because he withdrew the application. However the Applicant states he only withdrew his application after receiving a notice of intent to deny that application and that he did not attempt to correct the false information until nearly 10 years later when submitting the Form I-485, Application to Adjust Status, on April 4, 2014. Further, as noted above, an attempt to obtain an immigration benefit need not be successful for an applicant to be inadmissible for having “sought to procure” a benefit by willful misrepresentation.

The burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant. See INA 291. See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes only the U.S. citizen or lawfully resident spouse or parent of the Applicant. In the instant appeal, the applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act exists. As such, he is ineligible for 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 A-K-*, ID# 11315 (AAO Sept. 21, 2015)