



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

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

MATTER OF A-C-V-

DATE: SEPT. 30, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director, Nebraska Service Center, denied the application, concluding that the Applicant was inadmissible for having made a material misrepresentation to obtain a visa and that she had not established that she had a qualifying relative necessary for a waiver of inadmissibility.

The matter is now before us on appeal. On appeal, the Applicant submits a letter requesting approval of her waiver application and a copy of the approval notice for the Form I-130, Petition for Alien Relative, that her U.S. citizen son filed on her behalf.

Upon *de novo* review, we will dismiss the appeal, as the Applicant is inadmissible for making a material misrepresentation and is not eligible for a waiver of inadmissibility because she does not have a qualifying relative.

I. LAW

The Applicant has been found inadmissible for fraud or misrepresentation, specifically, for attempting to procure a nonimmigrant fiancée visa by misrepresenting her relationship with the individual who filed the related Form I-129F, Petition for Alien Fiancé(e). Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible any foreign national 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 the Act.

Matter of A-C-V-

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

II. ANALYSIS

The issue is whether the Applicant is inadmissible under section 212(a)(6)(C) of the Act for making a material misrepresentation to obtain a visa to the United States and whether she is eligible for a waiver of that inadmissibility. On appeal, the Applicant provides a copy of her Form I-130 approval notice and requests that her waiver application be approved.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, when she was interviewed at the U.S. consulate in [REDACTED] in 2005 concerning the Form I-129F petition filed on her behalf, she indicated that she had a relationship with the petitioner and her sole purpose for entering the United States was to conclude a valid marriage with him. The petitioner, however, submitted a sworn statement in 2005, stating that his relationship with the Applicant was for the sole purpose of getting her a visa to the United States, as a favor to his cousin.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

“[T]he test of whether concealments or misrepresentations are ‘material’ is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service’s decisions.” *Kungys v. United States*, 485 U.S. at 760. A misrepresentation is material if either the foreign national is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national’s eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (A.G. 1961; BIA 1960).

The Applicant’s misrepresentation that she was in a relationship with petitioner and that her sole purpose in entering the United States was to enter into a valid marriage with him was material to her eligibility for a fiancée visa. Thus she is inadmissible under section 212(a)(6)(C) of the Act.

B. Waiver

On appeal, the Applicant submits a copy of the approval notice for the Form I-130 her U.S. citizen son filed on her behalf. In addition, before the Director, the Applicant requested that she be granted a waiver of inadmissibility on a humanitarian basis, by describing how her separation from her sons, who were able to immigrate to the United States as a result of their father's immigration status, has been difficult. Her U.S. citizen son who filed the Form I-130 on her behalf also submitted a statement describing his suffering as a result of being separated from the Applicant.

The approval of a Form I-130 provides the Applicant a basis to apply for an immigrant visa. However, the Applicant is inadmissible under section 212(a)(6)(C) for making a material misrepresentation related to her prior visa application and thus is ineligible for an immigrant visa unless she obtains a waiver. The waiver for that ground of inadmissibility, found at section 212(i) of the Act, requires that the Applicant have a qualifying relative. That section of the Act states that only a U.S. citizen or lawful permanent resident parent or spouse is a qualifying relative. A U.S. citizen child is not a qualifying relative for purposes of the waiver the Applicant seeks. In addition, the Act provides no basis for granting a waiver of inadmissibility on humanitarian grounds, for the inadmissibility that applies to the Applicant. Though the Applicant submitted evidence of hardship to herself and her son, this hardship may not be considered in 212(i) waiver proceedings, unless it is shown to cause hardship to a qualifying relative. Because the Applicant has not established that she has a qualifying relative, she is not eligible for a waiver of inadmissibility under section 212(i) and remains inadmissible under section 212(a)(6)(C) of the Act.

As the Applicant has not demonstrated that she has a qualifying relative under section 212(i) of the Act, we need not consider whether she merits a waiver in the exercise of discretion.

IV. CONCLUSION

The Applicant has the burden of proving admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden, as she has not established that she is not inadmissible under section 212(a)(6)(C) of the Act or that she is eligible for a waiver under section 212(i) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C-V-*, ID# 10856 (AAO Sept. 30, 2016)