



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

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

In Re: 16063516

Date: FEB. 4, 2022

Appeal of Chicago, Illinois Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation.

The Director of the Chicago Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. The Director then determined the Applicant did not establish that her lawful permanent resident spouse would experience extreme hardship if he is unable to remain in the United States. On appeal, the Applicant argues she is not inadmissible due to fraud or misrepresentation, and even if she is inadmissible, her spouse would suffer extreme hardship if the Applicant is unable to remain in the United States.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal as moot because the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

I. LAW

Any noncitizen 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, is inadmissible. Section 212(a)(6)(C)(i) of the Act. 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 noncitizen.

A finding of inadmissibility based on willful misrepresentation requires the following elements: (1) the noncitizen procured, or sought to procure, a benefit under U.S. immigration laws; (2) the noncitizen made a false representation; (3) the false representation was willfully made; (4) the false representation was material; and (5) the false representation was made to a U.S. government official. *See 8 USCIS Policy Manual J.2(B)*, <https://www.uscis.gov/policymanual>.

A finding of inadmissibility based on fraud requires the following elements: (1) the noncitizen procured, or sought to procure, a benefit under U.S. immigration laws; (2) the noncitizen made a false representation; (3) the false representation was willfully made; (4) the false representation was material; (5) the false representation was made to a U.S. government official; (6) the false representation was made with the intent to deceive a U.S. government official authorized to act upon the request; and (7) the U.S. government official believed and acted upon the false representation by granting the benefit. *See 8 USCIS Policy Manual, supra*, at J.2(C).

II. ANALYSIS

The Applicant is seeking to adjust status to that of a lawful permanent resident. The record indicates the Applicant entered the United States without inspection and was apprehended three times in 1996, and she provided a false name and/or date of birth each time she was apprehended by immigration authorities. In denying the waiver application, the Director stated that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, and also found that the Applicant did not establish that her spouse would suffer extreme hardship as a result of her waiver being denied.

On appeal, the Applicant states that her misrepresentations concerning her identity do not render her inadmissible, as they were not made to procure a benefit under U.S. immigration laws. She also states that her spouse will suffer extreme hardship as a result of her waiver being denied and that she warrants a favorable exercise of discretion. We find that the Applicant's misrepresentations concerning her identity when she was apprehended were not made to procure a visa, admission, or other benefit under the Act. Therefore, they do not render her inadmissible under section 212(a)(6)(C)(i) of the Act.

As noted above, in order to be found inadmissible for fraud or willful misrepresentation, an applicant must have procured, or sought to procure, a benefit under U.S. immigration laws. *See 8 USCIS Policy Manual, supra*, at J.3(B)(1). Here, the Applicant did not attempt to obtain a visa or other documentation from immigration officials by using a false identity, nor was she seeking admission to the United States because she was already in the country at the times of apprehension.¹ Although she was present without authorization for a brief period of time, she voluntarily returned to Mexico immediately after apprehension. Therefore, a necessary element of a finding of inadmissibility for fraud or willful misrepresentation is missing in this case.

The Applicant bears the burden of proof to demonstrate admissibility. Because there is no evidence that the Applicant obtained or sought to obtain a benefit under the Act by fraud or willful misrepresentation, the Applicant has met the burden of proving that she is not inadmissible under section 212(a)(6)(C)(i) of the Act.

¹ At the times the Applicant was apprehended after entering the United States without inspection, she was present without lawful status and was subject to removal.

III. CONCLUSION

The Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver application is therefore not necessary. Since the Director does not indicate the Applicant is otherwise inadmissible, we will dismiss the waiver application as moot.

ORDER: The appeal is dismissed.