



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

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

In Re: 04689761

Date: OCT. 3, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, who has requested an immigrant visa abroad, 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 a material misrepresentation. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen.

The record reflects that the Applicant is seeking to immigrate to the United States as the beneficiary of an approved Form I-130, Petition for Alien Relative (visa petition) his U.S. citizen father filed on his behalf. The U.S. Department of State (DOS) determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, because he previously sought an immigrant visa as a stepchild of a U.S. citizen based on a visa petition that was determined to have been filed under false pretenses and ultimately revoked.

The Director of the Nebraska Service Center denied the instant Form I-601, concluding that the Applicant was inadmissible for fraud or misrepresentation and did not establish, as required, that refusal of admission will result in extreme hardship to his U.S. citizen father, the only qualifying relative. On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(6)(C)(i) of the Act because he was only six years old at the time of his immigrant visa interview, and for this reason any fraud or misrepresentation allegedly committed by someone else cannot be imputed to him.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal as moot.

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.

For a misrepresentation to be found willful, there must be evidence that the person had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented

false material facts. *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956), *superseded in part by Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and closely scrutinize the factual basis of a finding of inadmissibility for fraud or misrepresentation because such a finding “may perpetually bar [a noncitizen] from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994).

Although there is no statutory exception to inadmissibility under section 212(a)(6)(C)(i) of the Act for minors, a person’s age is not completely irrelevant. As the Supreme Court has noted, a “child’s age is far ‘more than a chronological fact.’ . . . It is a fact that ‘generates commonsense conclusions about behavior and perception.’” *J.D.B. v. N. Carolina*, 564 U.S. 261, 265 (2011) (cleaned up). In cases where a person, because of mental incompetence or young age, was incapable of independently forming an intent to defraud or misrepresent, a finding of inadmissibility for fraud or willful misrepresentation is precluded as the person could not have acted “willfully.” *See generally* 8 *USCIS Policy Manual* J.3(D)(5), <https://www.uscis.gov/policy-manual>. Thus, in evaluating whether a person is inadmissible for fraud or willful misrepresentation relevant factors include the person’s age, level of education, background, mental capacity, level of understanding, ability to appreciate the difference between true and false, and other relevant circumstances. *Id.*

For example, the U.S. Court of Appeals for the Sixth Circuit held that immigration fraud committed by the parents of a five-year-old child could not be imputed to that child because fraudulent conduct “necessarily includes both knowledge of falsity and an intent to deceive” and requires proof of such. *Singh v. Gonzales*, 451 F.3d 400, 407 (6th Cir. 2006) (stating that imputing fraud to a five-year-old child was “even further beyond the pale” than imputing a parent’s negligence to that child); *cf. Malik v. Mukasey*, 546 F.3d 890, 892-893 (7th Cir. 2008) (finding that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application could be held accountable for the misrepresentations, “given their ages at the time” as well as the fact that they had actively participated in perpetuating the false information).

Here, the record reflects that the Applicant, who was born in [ ] 1999, previously sought an immigrant visa based on his father’s marriage to a U.S. citizen, who filed a visa petition to classify him as her stepchild for immigration purposes. The record further indicates that during his January 2007 interview with a DOS Consular Officer the Applicant apparently stated that his father was married to his biological mother, and that he was not married in the United States. We note, however, that the Applicant was only six years old at the time of that interview. Furthermore, in the affidavit submitted with the instant waiver request, the Applicant’s father stated that he came to the United States before the Applicant’s birth, that the Applicant grew up without him, and that they did not meet until the Applicant was a teenager. Because the Applicant was six years old when he was interviewed by the Consular Officer, he did not have the mental capacity or level of understanding to comprehend the misrepresentation concerning his father’s marital status. Nor is it likely he had knowledge of his father’s marriage in the United States, as he had not yet met his father or the father’s U.S. citizen spouse.<sup>1</sup> Considering those circumstances and the Applicant’s young age at the time of his immigrant visa interview, the record does not support a conclusion that he willfully misrepresented a material

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<sup>1</sup> The record indicates that another relative accompanied him to the interview.

fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. As such, the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

Upon our request, both DOS and USCIS withdrew their respective determinations of the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act and updated their records accordingly.

Consequently, as the Applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, the instant waiver application is unnecessary and we will dismiss the appeal as moot.

**ORDER:** The appeal is dismissed.