

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

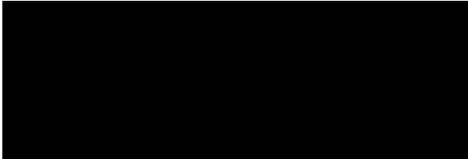
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tl2



FILE: [REDACTED]

Office: CHICAGO, IL

Date: APR 15 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated February 14, 2005.

On appeal, counsel asserts that the applicant's misrepresentation was not material and that the applicant's spouse would suffer extreme hardship if he is deported. *Brief in Support of Appeal*, dated April 7, 2005, at 4, 8.

The record includes, but is not limited to, counsel's brief; affidavits from the applicant's spouse, the applicant, the applicant's step-sons, and other relatives; a letter from a physician describing the applicant's wife's medical conditions; tax returns and other documents related to their financial situation; photographs of the applicant and his family; and country conditions information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in November 1994 and began using the name [REDACTED]. He used this name when he married the applicant on November 15, 1997 and continued to use the name after they were married. On January 14, 1998, the applicant's wife submitted Form I-130, Petition for Alien Relative, for the applicant using the name [REDACTED] and submitted a false birth certificate with that name. The petition was approved on June 16, 1998. On September 25, 2000, the applicant applied for adjustment of status and at that time provided his true name and a valid birth certificate. At his adjustment of status interview, the applicant stated that he had used the false name when his wife submitted the immigrant petition "to avoid Service scrutiny because of [his] immigration status." *See Decision of the District Director*, dated February 14, 2005. As a result of the prior misrepresentation, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

Counsel asserts that it was not the applicant, but the applicant's wife, who knowingly made a misrepresentation when she submitted the Petition for Alien Relative on the applicant's behalf. Counsel

further asserts that the regardless of who made the misrepresentation, it was not of a material fact. *Brief in Support of Appeal* at 5. Counsel relies on *Kungys v. United States*, 485 U.S. 759 (1988), to support this assertion, stating that to determine whether a concealment is material, the test is “whether the concealment has a natural tendency to influence the decision . . . , sufficient to raise a fair inference that a statutory disqualifying fact actually existed.” Counsel contends that if Citizenship and Immigration Services (CIS) had been aware of the applicant’s true name, the I-130 petition would still have been approved because, regardless of which name he was using, he was married to a U.S. Citizen and the marriage was and is a valid marriage. *Brief* at 5. Counsel also cites *Matter of Gilkevorkian*, 14 I&N Dec. 454 (BIA 1973) and *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), in which 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.

Counsel states that the applicant’s use of a false name did not cut off any line of inquiry relevant to the applicant’s eligibility. He distinguished the facts in the present case from others where failure to disclose one’s identity was found to be material, including a case in which an individual who was excludable used a false identity to obtain entry into the United States and another in which an individual’s identity was concealed to prevent disclosure of his criminal record. *See Brief* at 7.

The applicant states in his affidavit that after he arrived in the United States in 1994, he bought an identity document under the name [REDACTED] in order to work and, because he only had identification under that name, used it when he got married in 1997. Since he was married under the name [REDACTED], he also used that name when he and his wife submitted the I-130 petition in 1998. *See applicant’s affidavit, dated April 7, 2005.* When the applicant submitted his application for adjustment of status, he used his true name and submitted a valid birth certificate and other identity documents under his true name.

In determining whether the misrepresentation of the applicant’s identity is material, it must be determined whether this concealment had “a natural tendency to influence the decision.” *See Kungys v. United States, supra.* As counsel asserts, the decision to approve the immigrant petition submitted by the applicant’s wife was not dependent on his name, but whether he had entered into a bona fide marriage to a U.S. Citizen. Further, the AAO notes that the misrepresentation as to his identity does not appear to be an effort to fraudulently procure any future immigration benefit. The applicant’s immigration status is correctly listed as “EWI” on the I-130 petition, and it does not appear that he was using the false identity in an effort to conceal his unlawful entry and influence any future decision related to his admissibility or eligibility for adjustment of status.

The applicant’s wife submitted his I-130 petition on January 14, 1998 so that the applicant would be eligible for adjustment of status under section 245(i) of the Act, 8 U.S.C. § 1255(i), despite his entry without inspection. *See applicant’s affidavit* (stating, “[W]e saw on the TV that there was a deadline to submit the application for the I-130.”). According to the test established in *Matter of S- and B-C-, supra*, the concealment of the applicant’s identity is not material because the applicant would have been eligible for

approval of the immigrant petition based on his marriage regardless of his name. He was also not excludable or ineligible for adjustment of status on the true facts, as he qualified for relief under section 245(i) of the Act regardless of his name. There is no indication that using his true name would have revealed a ground of inadmissibility or ineligibility for any benefit sought. Further, the misrepresentation is not material under the second part of the test because use of his false identity did not shut off a line of inquiry that would have resulted in a finding of inadmissibility or ineligibility for any immigration benefit sought. 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, supra. 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-*, *supra*.

Based on the record, the AAO finds that the applicant, in providing a false name in connection with a Petition for Alien Relative filed on his behalf, did not commit fraud or misrepresent a material fact for immigration purposes and is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.