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U.S. Citizenship
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FILE:

Office: SAN FRANCISCO, CA

Date:

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IN RE:

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application declared moot.

The applicant is a native and citizen of the Philippines who 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 failing to disclose a prior removal proceeding when he applied for a nonimmigrant visa on February 18, 2002. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant's misrepresentation rendered him inadmissible under section 212(a)(6)(C)(i) of the Act. *Form I-601 Decision of the District Director*, dated November 9, 2004. The district director then concluded that the applicant had failed to establish extreme hardship to his qualifying relative as a result of his inadmissibility to the United States. The application was denied accordingly. *Id.* The district director also denied the applicant's Application to Register Permanent Residence as a result of the waiver denial. *Form I-485 Decision of the District Director*, dated November 9, 2004.

On appeal, counsel asserts that the applicant did not make a material misrepresentation when he applied for a visitor's visa to the United States. *Counsel's Brief*, dated December 6, 2004. Counsel also asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. *Id.*

The record indicates that the applicant first entered the United States in November 1992 using a tourist visa issued on July 14, 1992. The applicant then applied for asylum and was placed in deportation proceedings. On March 15, 1995, he was granted voluntary departure by an immigration judge and subsequently departed the United States in compliance with his voluntary departure, entering the Philippines on May 7, 1995. On February 18, 2002 the applicant applied for a nonimmigrant visitor's visa to enter the United States. His visitor's visa was issued on March 2, 2002 and the applicant entered the United States on April 18, 2002 with an authorized period of stay until June 12, 2002. The applicant married his spouse on August 6, 2002 and filed his application to register permanent residence on September 6, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The Supreme Court in, *Kungys v. United States*, 485 US 759 (1988) found that the 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 has a natural tendency to affect, the legacy Immigration and Naturalization Service's (now Citizenship and Immigration Services') decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that 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 resulted in proper determination that he be excluded.

Based on this standard, the AAO finds that the applicant's failure to disclose his prior deportation proceeding when he applied for a visitor's visa on February 18, 2002 was not a material misrepresentation.

The applicant was granted voluntary departure and complied with this departure. He does not have an order of deportation in his record. Thus, the applicant is not excludable on the true facts of his application. Further, since it has not been shown by clear unequivocal and convincing evidence that the applicant's concealment of his prior removal proceedings would not have been predictably capable of affecting the district director's decision, the applicant's misrepresentation was not material.

Based on the record, the AAO finds that the applicant did not misrepresent a material fact and he 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. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

ORDER: The November 9, 2004 decision of the district director is withdrawn. The appeal is dismissed as the underlying application is moot.