U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: DEC 31 2007

IN RE: Applicant: [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:

[redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the acting district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico. The record indicates that during the applicant's I-485, Adjustment of Status (I-485) interview on June 7, 2004, the applicant admitted, under oath, that he knowingly purchased a false Border Crossing Card that belonged to another person, and used said card on February 28, 2001 to attempt entry to the United States. It was determined that the applicant was 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), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant 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 lawful permanent resident mother and his U.S. citizen father.[1]

The acting district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated January 11, 2006.

In support of the appeal, counsel submits the following documents: a copy of the applicant's father's Naturalization Certificate, issued on January 6, 2006; a copy of the applicant's mother's Alien Registration Card; a copy of the applicant's parent's marriage certificate; photographs of the applicant and his family; and a copy of counsel's brief and the supporting documents submitted in regards to a notice of intent to deny issued with respect to the applicant's Adjustment of Status (Form I-485) application, dated May 9, 2005. The entire record was reviewed and considered in rendering a decision on the appeal.

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 Foreign Affairs Manual (FAM) further provides, in pertinent part:

> A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
>
> (1) The alien is excludable on the true facts; or

[1] The record reflects that the applicant's father, a lawful permanent resident at the time the Form I-130 was filed on the applicant's behalf, subsequently became a naturalized U.S. citizen on January 6, 2006.

(2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded. (Matter of S- and B-C, 9 I&N 436, at 447.)

9 FAM 40.63 N. 6.1.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. As counsel contends in her brief, the applicant was eligible for a V visa and "...had he been placed in removal proceedings, he would have been granted V visa status. As such, Mr. [redacted] [the applicant] was not properly excludable under the true facts..." *Counsel's Brief in Response to Intent to Deny Adjustment of Status,* dated May 9, 2005. Counsel thus maintains that even if a misrepresentation was made by the applicant when attempting entry to the United States in February 2001, the misrepresentation was not material in nature as the applicant was not excludable on the true facts.

According to the U.S. Department of State (DOS),

> Spouses (husbands and wives) and unmarried children under the age of 21 of lawful permanent residents may apply for V visas under these conditions:
>
> Lawful Permanent Resident (LPR) petitioner must have filed the I-130 immigrant visa petition on or before December 21, 2000;
>
> Priority date is at least three years old;
>
> Priority date is not current;
>
> Applicant has not already had an immigrant visa interview or been scheduled for an interview;
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> Petition is not already at an embassy or consulate abroad; and
>
> Applicant is otherwise eligible as an immigrant.

Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR), U.S. Department of State, dated May 2004.

In this case, the applicant's father filed an Immigrant Petition for Alien Relative (Form I-130) in May 1991 on the applicant's behalf, which was subsequently approved on June 13, 1991; the applicant's priority date was May 7, 1991. At the time of the applicant's attempted illegal entry to the United States in February 2001, according to the DOS Visa Bulletin for February 2001, the priority date for Family-Based 2A (Spouses and Children of Permanent Residents) for Mexican nationals was October 1, 1994. As such, based on the V Visa requirements outlined above, the AAO does not concur with counsel that the applicant would have been eligible to obtain a V Visa to enter the United States, because the priority date for the applicant's case was current when he attempted entry in February 2001.

Nevertheless, the AAO concurs with counsel that under the true facts, namely the applicant's eligibility for an immigrant visa based on an approved Form I-130 petitioned by his permanent resident father and a current priority date, he would not have been excludable. A misrepresentaton 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*, 485 U.S. 759 (1988); *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-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961). The AAO thus finds that the acting district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the acting district director is withdrawn and the application for a waiver of inadmissibility is declared moot.

ORDER: The appeal is dismissed, the prior decision of the acting district director is withdrawn and the application for a waiver of inadmissibility is declared moot.