U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ROME, ITALY Date: JUN 05 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:

SELF-REPRESENTED

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, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not 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 fraud or willful misrepresentation; thus, the waiver application is moot.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for 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), based on a qualifying relationship with his naturalized citizen mother [redacted]

The Acting District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and accordingly denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated June 8, 2005.

On appeal, the applicant's mother makes the following statements. She has health problems and the prognosis of her case requires periodical evaluations and check ups. She needs her son during her weakness. She has lost her job due to her health problems and lives independently of her relatives who are in the United States. Her son lived with her former husband until he passed away; now her son needs her emotional support. The applicant's mother submits medical records and employment letters on appeal.

The AAO will now address whether the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as determined by the director.

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 elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

> A misrepresentation made in connection with an application for 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
> 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.

The record indicates that the applicant was expeditiously removed from the United States on May 3, 2001. It was discovered upon secondary inspection that his possessions are generally not found held by a tourist such as a New York State Learner Permit, a healthcare card, a bank card and check book, and numerous supermarket and employment agency membership cards for the New York/New Jersey area. The applicant had entered the United States on a B1/B2 tourist visa twice in 1999 and 2000 and stayed for about 6 months

on both visits. He was charged as an immigrant without an immigrant visa under section 212(a)(7)(A)(i)(I) and expeditiously removed. *Notice and Order of Expedited Removal dated May 3, 2001.*

The AAO finds that the evidence of record is insufficient to establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The record reflects that on May 3, 2001 he sought to gain admission to the United States as a visitor for pleasure as he had previously done in 1999 and 2000. In a sworn statement, the applicant denied working in the United States while on the B1/B2 tourist visa. *Statement sworn and subscribed on May 3, 2001.* Immigration officials determined that the items possessed by the applicant, a New York State Learner Permit, a healthcare card, a bank card and check book, and numerous supermarket and employment agency membership cards, indicated that he previously engaged in unauthorized employment in the United States while on the B1/B2 tourist visa.

However, the AAO finds that the items possessed by the applicant are not, individually or collectively, sufficient to establish that he engaged in unauthorized employment while in the United States. The AAO therefore finds the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

ORDER: The June 15, 2005 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.