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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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MAY 08 2009

FILE: [REDACTED] Office: BALTIMORE, MD Date:

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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 that reads "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as the underlying application is moot. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of Brazil who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated September 28, 2006.

On appeal, counsel contends that the applicant's alleged misrepresentation was not material. Counsel alternatively contends that the applicant has established that her husband would suffer extreme hardship if she were refused admission to the United States and submits new evidence that she is pregnant.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

After a complete review of the record, the AAO concludes that the applicant did not willfully misrepresent a material fact in order to procure an immigration benefit.

In this case, the district director found that on the applicant's visa application, she allegedly "supplied a wrong home address and wrong telephone numbers for [her] place of employment." *Decision of the District Director, supra*. The record shows that despite several attempts, the applicant's visa application could not be located. Therefore, the record does not contain a copy of the applicant's visa application. As counsel points out, there is no specific information regarding why the home address and telephone numbers listed on the application are claimed to be incorrect. Accordingly, there is no information in the record indicating the applicant provided incorrect information on her visa application.

Moreover, even if the record indicated that the applicant did, indeed, provide an erroneous address and phone numbers, there is no indication this information was material. According to the

Department of State's Foreign Affairs Manual, 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 that is relevant to the alien's eligibility and that might well have resulted in a proper determination that she be excluded. 9 FAM 40.63 N61. A misrepresentation is generally material only if by it the alien received a benefit for which she would not otherwise have been eligible. See *Kungys v. United States*, 485 US 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); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). In this case, there is no indication that providing the applicant's correct address and phone numbers would have revealed a ground of inadmissibility or shut off a line of inquiry which would have resulted in a finding of inadmissibility. Therefore, these inaccuracies are not material.

The AAO finds that the district director erred in finding that the applicant willfully misrepresented a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The district director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as the underlying application is moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.