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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

765

FILE: [REDACTED] Office: MIAMI, FL

Date: JAN 31 2011

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying application is moot. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Costa Rica 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 having a backdated Costa Rican admission stamp in his Costa Rican passport. 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).<sup>1</sup>

In an undated decision the district director found that the applicant failed to demonstrate that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility to the United States. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated May 22, 2008, the applicant states that he in no way intended to defraud the United States government with the backdated stamp in his Costa Rican passport. The applicant also states that his spouse would suffer extreme hardship as a result of his removal from the United States.

The record indicates that on March 21, 2007 the applicant's Costa Rican passport was sent from the applicant's brother in Costa Rica to the applicant in the United States. The passport was intercepted by U.S. Customs and Border Protection and found to contain a counterfeit or backdated Costa Rican admission stamp dated May 21, 2001.

On September 18, 2007 the applicant appeared for his adjustment interview and was questioned about his Costa Rican passport. During the interview the applicant gave a sworn statement asserting that he was aware of the backdated stamp being put in his passport.

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 AAO finds that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because he did not make a misrepresentation to a U.S. government official in an attempt to procure an immigration benefit or admission into the United States. The record does not indicate that the applicant ever presented the passport with the backdated Costa Rican admission stamp to a U.S.

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<sup>1</sup> The AAO notes that the applicant has a criminal record of two convictions for loitering and prowling under Florida Statutes § 856.021, which do not involve moral turpitude and thus do not make him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

government official; in fact, the record indicates that he was never in possession of the passport with the backdated Costa Rican admission stamp.

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*, 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) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). Furthermore, fraud or misrepresentations, as contemplated by section 212(a)(6)(C)(i) of the Act, must be made to a U.S. government official in an attempt to procure a benefit. See *Matter of Y-G*, 20 I&N Dec. 794, 797-98 (BIA 1994).

Thus, the AAO finds that the current record does not indicate that the applicant is inadmissible under 212(a)(6)(C) of the Act. Accordingly, the applicant is not inadmissible as a result of the backdated Costa Rican admission stamp in his passport and the district director's findings regarding this stamp are withdrawn. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The matter will be returned to the field office director for continued processing.