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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

[redacted]

H5

Date: JUL 16 2012 Office: NEW YORK FILE: [redacted]

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

The applicant is a native and citizen of Colombia 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 seeking to procure a benefit under the Act by willful misrepresentation. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen children and lawful permanent resident wife.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated March 14, 2009.

On appeal, counsel for the applicant asserts that the applicant's family members will experience extreme hardship should the present waiver application be denied. *Statement from Counsel*, dated November 17, 2009.

The record contains, but is not limited to: correspondence from counsel; statements from the applicant, the applicant's wife, and the applicant's children; medical documentation for the applicant; reports on conditions in Colombia; documentation regarding the financial status of the applicant's family including tax and employment records; and documentation in connection with the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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

> 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 record shows that a letter was submitted to the U.S. Department of Labor as evidence that the applicant was employed with [redacted] from October 10, 1987 until the date of the letter, June 22, 1991. It was determined that the letter contained a fraudulent notary public stamp. Based on this fact, the district director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking a benefit under the Act through misrepresentation. It is noted that, in a decision dated May 31, 2005 denying a prior Form I-485 application, the district director further commented that the applicant failed to reveal his prior misrepresentation where requested on Form I-485.

Upon review, the record does not support that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, as the inclusion of a fraudulent notary public stamp on the employment verification letter did not constitute a material misrepresentation. 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 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); *Matter of S-*

and B-C-, 9 I&N Dec. 436 (BIA 1960, AG 1961). The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as "(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." 9 I&N Dec. 436, 447 (BIA 1960).

The employment verification letter in this case was accompanied by wage and tax documents to support that the applicant was employed with the issuing body shop during the specified period. The facts presented in the letter are not in contention, and the record does not show that the applicant's work history was falsely represented. There was no requirement that the employment letter contain a notary public stamp, and the failure to include a valid stamp did not impact the applicant's eligibility for the benefit sought. As the applicant's work history was presented accurately, the Department of Labor officer reviewing the application was afforded an opportunity to engage in all material lines of inquiry relating to the applicant's and his employer's eligibility for Alien Employment Certification pursuant to the Form ETA-750 filing. As the inclusion of the fraudulent notary public stamp did not constitute a material misrepresentation, the applicant did not have an obligation to indicate on Form I-485 that he had previously sought a benefit under the Act through fraud or misrepresentation.

Based on the foregoing, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act. It is noted that the applicant has been convicted of two offenses of driving under the influence of alcohol, in 1991 and 1999. The AAO has reviewed these convictions to determine whether they render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude, and we find that his convictions for simple DUI are not crimes involving moral turpitude. Accordingly the applicant does not require a waiver of inadmissibility, and the present Form I-601 application for a waiver is unnecessary. The appeal will be dismissed on this basis.

ORDER: The appeal is dismissed as the applicant is not inadmissible and the waiver application is unnecessary.