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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JUL 3 1 2012 Office: GUANGZHOU, CHINA FILE: [redacted]

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 Field Office Director (FOD), Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the record does not establish that the applicant is 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), and the relevant waiver application is therefore unnecessary.

The applicant is a citizen of China 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 seeking to procure admission to the United States through fraud or misrepresentation. The applicant's spouse is a legal permanent resident of the United States and her daughter is a U.S. citizen. The applicant is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and daughter.

The FOD concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated December 29, 2010.

On appeal, the applicant states that her qualifying relative would experience extreme hardship if her waiver application is not granted and submits additional evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated January 24, 2011.

The evidence of record includes, but is not limited to: statements from the applicant, her spouse, and family members; medical documentation for the applicant's grandchild; financial documents; photographs; identification and relationship documents; and documents in Chinese.

8 C.F.R. § 103.2(b) states:

> (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Chinese-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching 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.

A misrepresentation is generally material only if by making it the alien received a benefit for which she 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). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for 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 proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness of the applicant's stated misrepresentations, 9 FAM 40.63 N5, in pertinent part, states that:

> The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

In order for the applicant to be inadmissible under INA § 212(a)(6), the applicant's misrepresentations not only must be willful, but they must be material. According to the U.S. Supreme Court, a misrepresentation must have been "predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material." *Kungys v. U.S.*, 485 U.S. at 771-72. Additionally, "materiality" is defined in 9 FAM 40.63 N6.1, which states, in pertinent part, that:

> Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be as follows: "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 inadmissible 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 or she be inadmissible." (*Matter of S- and B-C*, 9 I & N 436, at 447.)

An individual's identity and the existence of a prior application for a nonimmigrant visa are not facts in and of themselves that are material. *See* 9 FAM 40.63 N6.3-3. "They can be material for purposes of 212(a)(6)(C)(i), but only if the alien is inadmissible on the true facts or the misrepresentation tends to cut off a relevant line of inquiry which might have led to a proper finding of ineligibility." *Id.*

In the present case, the record indicates that the applicant obtained several B1/B2 nonimmigrant visas and entered the United States four times using the name [redacted] The applicant applied for an immigrant visa as [redacted] and during her visa interview, the applicant concealed her previous entries with the name [redacted] The field office director found the applicant inadmissible under 212(a)(6)(C)(i) of the Act for not revealing her previous entries to the United States and for failing to disclose her alias.

The applicant states that because she felt her work and personal life were going "wrong" and believed in "superstitions and destiny theory on the name," she changed her name from [redacted] to [redacted] The record establishes that the applicant is officially registered under both names. The applicant submitted a "Notarial Certificate of Previous Names Used," dated July 13, 2010, indicating that [redacted] previous name was [redacted]. A "Household Registration Certificate," issued by the Suzhou Public Security Bureau, indicates that the applicant is known by and registered under both names. The applicant's passport issued in her current name also notes [redacted] as her previously used name. While going through the immigrant-visa process, the applicant had been told that another applicant with two names experienced delays in getting a visa. As a result the applicant, thinking her two names might cause a similar delay, did not admit to being known by and registered under two names.

The record establishes that the applicant's misrepresentation was willful. However, willfulness alone does not establish inadmissibility. The misrepresentation also must be material. Evidence in the record shows that the applicant did not accumulate unlawful presence during her visits to the United States using the name [redacted] Moreover, she departed the United States timely after each entry. The record shows no other facts related to her identity as either [redacted]

[redacted] or [redacted] that would support finding her inadmissible. Because the applicant was not inadmissible on the true facts, the concealment was not material; her misrepresentation did not cut off a relevant line of inquiry which might have led to a proper finding of ineligibility.

Based on the foregoing, the applicant's misrepresentation was not material within the meaning of section 212(a)(6)(C) of the Act, and she is therefore not inadmissible under section 212(a)(6)(C) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has shown that she is not inadmissible and therefore not required to file the waiver application. Accordingly, the appeal will be dismissed as unnecessary.

**ORDER:** The appeal is dismissed because the applicant is not inadmissible and a waiver is unnecessary.