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

U.S. Citizenship and Immigration Services

DATE: JUN 2 8 2013 OFFICE: WASHINGTON, DC FILE:

IN RE: APPLICANT:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, DC, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Trinidad and Tobago who has resided in the United States since February 24, 2012, when she was admitted pursuant to a multiple-entry B-1/B-2 nonimmigrant visa. She 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 procured that visa to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 13, 2012.

On appeal, counsel contends the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act with respect to her spouse's information on her nonimmigrant visa application. Counsel further asserts that the Field Office Director failed to consider the hardships her spouse would experience in their totality.

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

> (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.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the record reflects that the applicant and the Form I-130 petitioner, purportedly a dual citizen of Venezuela and the United States, married on January 7, 2006. The applicant was then granted an A-2 visa in June 2006, and was subsequently admitted to the United States in A-2 status. The record reflects that the applicant's spouse traveled to the United States on November 26, 2011, and signed a one-year lease on an apartment in Washington, DC on November 30, 2011.

The applicant submitted a nonimmigrant visa application on December 5, 2011. Therein, the applicant indicated her spouse was a national of Venezuela, as he was born in El Tigre, Venezuela. She additionally indicated that she had no relatives in the United States. The applicant was issued the multiple entry nonimmigrant visa on December 13, 2011. She was admitted to the United States on December 24, 2011, and returned to Trinidad and Tobago in February 2012. The applicant subsequently returned to the United States on February 29, 2012, and has remained here ever since. The applicant's spouse filed a Form I-130 petition on her behalf on April 4, 2012, along with the applicant's Form I-485 Application to Register Permanent Residence or Adjust Status. In a sworn statement, the applicant states she did not discuss her spouse's U.S. citizenship because the consular officer did not ask about it, and she gave her address in Trinidad and Tobago as her spouse's address because it was their marital home, and he was only in the United States to pursue opportunities. *Sworn statement,* June 26, 2012. The applicant added that when she attended the consular interview, she was still lecturing at the university in and she intended to continue with that career. Nevertheless, the Field Office Director found the applicant was inadmissible pursuant to section 212(a)(6)(C) of the Act for making false and misleading statements on her nonimmigrant visa application, specifically, her spouse's residence in the United States.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

> 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....
>
> "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 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 have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

DOS Foreign Affairs Manual, § *40.63 N. 6.1.* Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

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) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

> (B) an alien…having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

Counsel contends the applicant did not have any immigrant intent until well after she arrived in the United States on her second visit, and, as a result, any inadvertent omission of her spouse's U.S. citizenship or his location was not material. Counsel's contentions are supported by evidence of record. The applicant truthfully indicated on the nonimmigrant visa application that her spouse was a national of Venezuela.[1] The applicant attested in a sworn statement that she did not tell the consular officer that her spouse was a U.S. citizen because the officer did not ask about it, and the record does not contain information to the contrary. The applicant's failure to volunteer this information cannot constitute the basis for a finding of inadmissibility under section 212(a)(6)(C) of the Act. The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS,* 554 F.2d 921, 925 (9th Cir.1977). Knowledge of the falsity of a representation is sufficient. *Id.*, citing *Matter of Hui,* 15 I & N Dec. 288 (BIA 1975). An alien's silence or failure to volunteer information does not, in and of itself, constitute material misrepresentation for purposes of determining inadmissibility under section 212(a)(6)(C)(i) of the Act because silence in itself "does not establish a conscious concealment or fraud and misrepresentation." *See Matter of G-,* 6 I&N Dec. 9 (BIA 1953) *superseded on other issues by Matter of F-M-,* 7 I&N Dec. 420 (BIA 1957). *See also 9 FAM 40.63 N. 4.2* ("In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).") Additionally, the applicant has submitted sufficient evidence demonstrating the U.S. Department of State knew she was married to a U.S. citizen at the time she made the visa application. *See U.S. Department of State Diplomatic List, Spring/Summer 2008.* Given this evidence of record, as well as the language of the DS-160 form, the AAO finds her omission of her spouse's U.S. citizenship does not render her inadmissible under section 212(a)(6)(C) of the Act.

Furthermore, although the applicant's representations with respect to her spouse's location were not correct, the AAO finds this to be immaterial. At the time of the visa application, the applicant

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[1] The DS-160, Nonimmigrant visa application, requested information on the spouse's nationality, not his citizenship.

had been married to her spouse for over three years, and, as explained above, the U.S. Department of State knew she was married to a U.S. citizen.[2] During those three years, the spouse had not filed an immigrant petition on her behalf, and the applicant had complied with the terms of her nonimmigrant A-2 visa. Even if the applicant had disclosed that her spouse was in the United States, she was not excludable on that fact alone. Moreover, the fact that her spouse was then in the United States, while relevant, would not by itself have precluded her from demonstrating she was visiting the United States temporarily. The applicant had complied with the terms of her previous nonimmigrant visa, despite the fact that she was married to a U.S. citizen when she first obtained it. The record also contains documentation of her intention to return to Trinidad and Tobago so she could continue her employment with the graduate school of business in that country. In addition to her employment in Trinidad and Tobago, she demonstrated she had family ties to that country. The AAO further notes that the applicant complied with the terms of her B-1/B-2 visa and Form I-94 during her first visit by returning to Trinidad and Tobago in February 2012. Given these documented ties to Trinidad and Tobago, as well as her history of compliance with the terms of her previous nonimmigrant visa, the AAO finds the applicant would have been able to demonstrate she did not intend to abandon her residence in , despite her spouse's location in the United States. As such, the AAO concludes her representation with respect to her husband's location does not constitute a material misrepresentation which would make her inadmissible under section 212(a)(6)(C) of the Act.

The AAO therefore finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, the Form I-601 is unnecessary. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether she has established a qualifying relative would experience extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

ORDER: The appeal is dismissed as unnecessary.

[2] The AAO notes that the applicant's A-2 visa, issued in June 2006, was issued by the same consulate which issued the 2011 B-1/B-2 visa.