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

U.S. Citizenship and Immigration Services

Date: APR 24 2014 Office: RENO 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Reno, Nevada, 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 China who was found to be inadmissible pursuant 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 admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 spouse.

The Acting Field Office Director determined that the applicant misrepresented a material fact during her interview for a nonimmigrant visa by asserting that her cousin in the United States was her friend. The Acting Field Office Director also concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director,* dated June 25, 2013.

On appeal, filed on July 27, 2013 and received by the AAO on December 1, 2013, counsel contends that the Form I-601 is not necessary, as the applicant did not engage in fraud or misrepresent a material fact during her interview for a nonimmigrant visa. In the alternative, counsel contends that the applicant has established that her spouse would experience extreme hardship if the waiver application is not approved.

The record includes, but is not limited to, the following documentation: briefs filed by counsel in support of the Form I-290B, Notice of Motion or Appeal, and the Form I-601; statements from the applicant and the applicant's spouse; documentation related to the applicant's 2011 nonimmigrant visa application; financial documentation; a letter from a psychologist about the applicant and the applicant's spouse; and photographs. The entire record has been considered in this decision.

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.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now Secretary of the Department of Homeland Security (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.

The record reflects that the applicant, during her interview for a nonimmigrant visa at the U.S. Consulate in Guangzhou, China, declared that her contact person in the United States was a friend. In addition, the applicant answered "no" in response to the question "Do you have any other relatives in the United States?" It was subsequently determined that the applicant's contact person in the United States is actually a relative, her cousin.

Counsel asserts that the applicant's statement concerning her cousin is not a material misrepresentation, because her cousin is not eligible to file a Form I-130 on behalf of the applicant. Her cousin, therefore, could not confer an immigration benefit to her. Counsel also asserts that the applicant called her cousin her friend because their relationship was not established or known to them until recently, given the applicant's mother's separation from her family at a young age.

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). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for a 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).

The AAO finds that the applicant's misrepresentation related to her cousin was not material, as there is no evidence that her cousin could confer an immigration benefit to the applicant. The applicant would not have been inadmissible or ineligible on the true facts, nor did this misrepresentation cut off a line of inquiry that would have been relevant to the applicant's eligibility and which might well have resulted in a proper determination that she was inadmissible.

Based on the record, the AAO finds that the applicant, by declaring that her cousin was a friend, did not seek to procure a visa, other documentation, admission into the United States, or other benefit provided under the Act, and is not inadmissible under section 212(a)(6)(C) of the Act.

The record also indicates that the applicant's cousin entered into a lease on April 1, 2011, that lists the applicant as one of the occupants. The lease is dated more than two weeks before the applicant

was interviewed for her nonimmigrant visa at the U.S. Consulate in Guangzhou, China on April 19, 2011. However, the record also indicates that U.S. immigration officers questioned the applicant about the lease, and she denied knowing that her name was added to the lease before she arrived in the United States. No evidence in the record establishes that the applicant was aware of this lease during her nonimmigrant visa interview; thus it does not support finding that the applicant misrepresented the purpose of her visit to the United States when U.S. consular officials interviewed her.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying application is unnecessary.