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

(b)(6)

[redacted]

Date: MAR 18 2014 Office: ATLANTA FIELD OFFICE [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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Atlanta, Georgia, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary.

The applicant is a native and citizen of India 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his lawful permanent resident spouse.

The Acting Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Acting Field Office Director* dated February 9, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the Service erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief; affidavits from the applicant and his spouse; and letters of support from the applicant's children and employees. The record contains previous statements from the applicant and his spouse.

The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 field office director determined that when the applicant arrived at the United States on November 23, 1993, he was not in possession of a valid travel document to allow entry to the United States, and when questioned by an immigration officer, provided a name and date of birth other than his own. The field office director stated that the applicant was given the option to withdraw his

application for admission or go before immigration judge, electing to go before a judge. The field office director stated that the applicant's admission was then deferred and exclusion proceedings initiated against him, and that as a result of his failure to appear, exclusion proceedings were administratively closed. The field office director therefore found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

The record reflects that on November 23, 1993, the applicant arrived at Kennedy Airport in New York without a valid, unexpired non-immigrant visa and was deferred under the provisions of Section 235(b) of the INA for a hearing before an immigration judge to determine whether or not he was entitled to enter the United States or shall be excluded and deported. When questioned by an immigration officer, he provided a false name and date of birth.

In an affidavit the applicant stated that an agent arranged his trip and told him to destroy his passport and to use false name and date of birth when arriving at the United States. The applicant stated that he did receive notice to appear at immigration court, but as he feared being sent to India, he did not go.

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); and *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 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 as the applicant possessed no valid entry documents at the time he arrived at the United States he was excludable at entry irrespective of presenting his real or a false name and date of birth, and therefore providing a false name and date of birth was not material to the applicant obtaining an immigration benefit. Thus, the AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act need not be addressed.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.