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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 0 9 2013 OFFICE: SANTO DOMINGO, D.R. File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11), and 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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, the Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. On November 9, 2012, the AAO issued a Request for Evidence (RFE), requesting the applicant to provide additional evidence to supplement the record in order to continue processing the appeal. The appeal will be dismissed as the waiver application is not necessary.

The applicant is a native and citizen of the Dominican Republic 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 having sought to procure a visa through fraud or misrepresentation. The applicant also was found to be inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of the law. The applicant is the son of a U.S. citizen and a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen father.[1] The applicant, through counsel, contests the finding of inadmissibility under section 212(a)(6)(C)(i), and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his father.[2]

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated October 28, 2010.

On appeal, counsel asserts the applicant should not have been found inadmissible under section 212(a)(6)(C)(i) of the Act for having misrepresented his marital status over 10 years ago as he did not lie; he was divorced. Counsel also asserts the applicant's father has demonstrated a reasonable and logical basis for extreme hardship as he is elderly and needs the applicant's assistance in the United States. *See* Notice of Appeal or Motion (Form I-290B), dated November 22, 2010.

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[1] The record establishes that on August 23, 1993, the applicant's lawful permanent resident mother filed a Form I-130 petition on behalf of the applicant as her unmarried son, and on September 20, 1993, the legacy Immigration and Naturalization Service (INS) (now the U.S. Citizenship and Immigration Services (USCIS)) approved the Form I-130 petition. The record also establishes USCIS issued a Notice of Intent to Revoke (NOIR) the Form I-130 petition on July 7, 2008, as the applicant allegedly entered into a sham divorce solely for the purpose of receiving an immigration benefit. On October 22, 2008, USCIS revoked the approval of the I-130 petition as the record did not include a response to the NOIR.

[2] The AAO notes counsel does not address the applicant's inadmissibility under section 212(a)(6)(E)(i) of the Act or any extreme hardship the applicant's other qualifying relative may experience, his lawful permanent resident mother.

The record includes, but is not limited to: a response to the RFE and correspondence from counsel; a letter of support from the applicant's father; identity, birth, marriage, divorce, medical, and financial documents; and sworn statements. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (C) Misrepresentation.-
>
> > (i) In general.- 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.
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> > ...
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> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).
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> > ...
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> (E) Smugglers.-
>
> > (i) In General.- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
> >
> > ...
> >
> > (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (d)(11).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir., 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy INS's (now USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are 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:
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> a. the alien is excludable on the true facts, or
> b. 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 (AG 1961).

In the present matter, the record reflects the applicant was married to [redacted] and subsequently obtained a divorce from her at the instigation of his family members due to allegations of abuse.[3] The record also reflects the applicant and [redacted] continued to reside with one another after their divorce, and on June 7, 2002, the applicant attested before the U.S. Consulate Investigator that he was living with [redacted] and their adult son and two children in the same household. On December 9, 2002, the applicant signed an attestation before the U.S. Consulate Investigator that he obtained a divorce from [redacted] solely for the purpose of obtaining his residency in the United States. *See Matter of Aldecoaotalora*, 18 I&N Dec. 430 (BIA 1983).

The AAO finds the record does not support the conclusion the applicant has committed fraud or willfully misrepresented a material fact; i.e., that he obtained a divorce solely for the purpose of qualifying for an immigrant visa as the unmarried son of a lawful permanent resident or U.S. citizen. Although the record is not clear concerning the exact date of the applicant's divorce, the record shows the applicant's mother did not submit the initial I-130 petition filed on his behalf until August 23, 1993; at least one year and three months subsequent to the applicant's divorce. The record includes a one-sentence, pre-typed attestation signed by the applicant indicating that he divorced his wife to receive his residency in the United States, and a separate one-sentence, pre-typed attestation signed by the applicant indicating that he, his wife and his children resided together as of June 7, 2002. However, the AAO notes the applicant signed the attestations *pro se* and the attestations do not include any other statements or indication that the applicant understood the contents of the attestations or the legal consequences for signing such statements. The statements are brief and lack any background factual information to provide a clear understanding of the applicant's actions, circumstances, or intentions in obtaining a divorce. The brief and

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[3] The AAO notes the record is unclear concerning the date of divorce as the record indicates the divorce occurred on: March 20, 1991; May 5, 1992; and May 17, 1992.

conclusory nature of the attestation regarding the applicant's purpose in obtaining a divorce calls into question whether he was aware of the true nature of the statement, and whether it accurately represents his intention. Moreover, there is no other evidence in the record demonstrating "in what by all appearances is a marital relationship"; the ownership of a home and other property as joint community property, civil and employment documents identifying the applicant as "married", or the joint filing of taxes. *Matter of Aldecoaotalora, supra*. Accordingly, the AAO finds the two brief attestations signed by the applicant are not sufficient to show by a preponderance of the evidence that he in fact obtained a divorce from his wife solely for the purpose of evading the immigration laws of the United States. Nor do they establish that the applicant committed fraud or willfully misrepresented any material fact. Accordingly, there is insufficient evidence to show that he is 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 based on the current record.

Additionally, the record reflects the applicant's mother and father indicated on the I-130 petitions filed on the applicant's behalf that he had an adult son and two children who were nationals of the Dominican Republic. The record does not show that the applicant made representations in connection with the Forms I-130, or that he otherwise attempted to unlawfully facilitate the entrance of another person into the United States. Accordingly, there is no evidence in the record the applicant has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law. Thereby, the AAO finds the applicant is not inadmissible pursuant to section 212(a)(6)(E)(i) of the Act.

The Field Office Director's findings regarding fraud and misrepresentation under section 212(a)(6)(C) and alien smuggling under section 212(a)(6)(E) of the Act will be withdrawn. The waiver application filed pursuant to section 212(i) and 212(d)(11) of the Act is therefore not necessary.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and 212(d)(11)of the Act, the burden of proving eligibility remains entirely with the applicant. *See* §§ 212(i) and 212(d)(11) of the Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11). Here, the applicant is not required to file for a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the waiver application is not necessary.

ORDER: The applicant's waiver application is declared unnecessary and the appeal is dismissed.