

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

[REDACTED]

A₂

DATE: **JUN 22 2011**

Office: KENDALL FIELD OFFICE

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee Act of November 2, 1966 (P.L. 89-732)

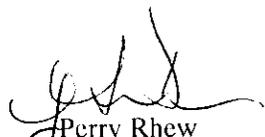
ON BEHALF OF APPLICANT:

[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,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Kendall, Florida, denied the application to adjust status and certified his decision to the Administrative Appeals Office (AAO) for review. The field office director's decision is withdrawn and the matter is remanded for entry of a new decision.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

{T}he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in her discretion and under such regulations as she may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. . . . The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

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

- (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.

Pertinent Facts and Procedural History

The applicant applied for admission to the United States on February 23, 2009 at the [REDACTED] Texas border. He was paroled into the United States on February 23, 2009 pending a section 240 hearing. He filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on April 29, 2010. On January 12, 2011, he was scheduled for an interview on his Form I-485 application. At the interview he indicated that he had married L-J¹, a native and citizen of Ecuador, on February 25, 2010 in Coral Gables, Florida. The applicant declared that the marriage was bona fide and the interview was continued to allow the applicant to provide documentation of the bona fides of the marriage. L-J- had also filed a Form I-485 on April 29, 2010 as the spouse of a native or citizen of Cuba eligible for adjustment under section 1 of the CAA. The applicant and L-J- appeared for the scheduled interview on January 31, 2011 and were placed under oath and questioned regarding their domestic life and shared experiences. On February 17, 2011, the field office director denied L-J-'s concurrently filed Form I-485 based on numerous and significant discrepancies found during the January 31, 2011 interview. The director denied the applicant's Form I-485 as an alien falling within the purview of section

¹ Name withheld to protect the individual's identity.

212(a)(6)(C)(i) of the Act – misrepresentation – as the statements made under oath and under penalty of perjury were material to the adjudication of the applicant and L-J-'s applications for permanent residence. The director certified his decision to the AAO for review.

On certification, counsel for the applicant submits a March 21, 2011 letter noting that he represents both the applicant and L-J- and that L-J- has filed a Form I-290B, Notice of Appeal or Motion, requesting that the denial of her Form I-485 be reopened and reconsidered. Counsel attaches a copy of L-J-'s motion with her statement, affidavits, and documentary evidence and requests that the AAO consolidate and reconsider the evidence in both matters.

Analysis and Conclusion

Preliminarily, the AAO notes that it is without appellate authority to adjudicate the denial of L-J-'s Form I-485. See 8 C.F.R. § 245.2(a)(5)(iii). Thus the matters may not be consolidated. Moreover, L-J-'s Form I-485 can not precede the adjustment of the principal applicant. The adjustment must be completed at the same time as, or subsequent to, the principal's adjustment. *Matter of Coto*, 13 I. & N. 740 (BIA 1971).

The field office director in this matter determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he sought to bestow benefits under the Act upon L-J- by fraud or willfully misrepresenting material facts. We concur that section 212(a)(6)(C)(i) is applicable to an individual willfully misrepresents a material fact when seeking to procure a visa, admission into the United States, or another benefit under the Act. However, the field office director in this matter does not discuss the discrepancies that arose in the interview of the applicant and L-J-, or identify the material misrepresentations that were made. The director also fails to explain how the materiality of the discrepancies and misrepresentations impact on the bona fides of the couple's marriage. Accordingly, the AAO is withdrawing the director's stated reason for denial and remanding the matter for entry of a new decision. The field office director may request any evidence he deems necessary before entering a new decision into the record.²

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status.

ORDER: The director's decision is withdrawn. The matter is remanded for entry of a new decision on the applicant's adjustment of status application.

² In *Matter of G-G*, I&N Dec. 161 (BIA 1956), the Board of Immigration Appeals (BIA) held that "fraud" consists of a false representation of a material fact made with knowledge of its falsity and with intent to deceive the immigration officer, who then acts upon his or her belief of the fraud. Willful misrepresentation occurs when the misrepresentation was deliberate and voluntary. *Forbes v. I.N.S.*, 48 F.3d 439, 442 (9th Cir. 1995). Proof of an intent to deceive is not required. *Id.* Rather, knowledge of the falsity of a representation is sufficient. *Id.* A timely retraction or recantation of the fraud or misrepresentation may prevent a finding of inadmissibility, but the retraction must be made without delay and voluntarily, before being confronted by a government official. *Valadez-Munoz v. Holder*, 623 F.3d 1304, 1309-10 (9th Cir. 2010).