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U.S. Citizenship  
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FILE#

Office: CALIFORNIA SERVICE CENTER

Date:

**AUG 12 2008**

IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 spouse.

The service center director concluded that the applicant failed to establish that 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 Service Center Director*, dated May 8, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) failed to consider all of the factors in the aggregate when determining that the applicant had not established that his removal would result in extreme hardship to his U.S. Citizen spouse. *See Notice of Appeal to the Administrative Appeals Office (Form I-290B)*. Specifically, counsel claims that the applicant's wife would suffer extreme emotional, financial, and physical hardship if the applicant were removed to Ecuador because of her family ties in the United States and lack of family ties in Ecuador, economic conditions and lack of adequate health care in Ecuador, loss of the applicant's income and lack of employment opportunities if she were to relocate to Ecuador, emotional and physical suffering brought on by stress over the prospect of the applicant's removal, and the potential impact of the applicant's removal on their children. *See Memorandum of Law in Support of I-601 Application* at 9-14. Counsel submitted additional documentation with the appeal to further document the hardship to the applicant's spouse that would result if he were removed from the United States.

The record reflects that the applicant entered the United States without inspection in June, 1995. The applicant was arrested in Meriden, Connecticut on September 13, 1997 after a traffic violation and was later charged with forgery in the second degree when he presented a fraudulent Form I-551 in the name of [REDACTED] to establish his identity. The applicant was then taken into the custody of the Immigration and Naturalization Service (now Immigration and Customs Enforcement (ICE)) and stated his name was Tony [REDACTED] and that he was a native and citizen of Mexico. *See Record of Sworn Statement, Form I-215B*, dated September 16, 1997. He was presented with *Form I-826, Notice of Rights and Request for Disposition*, and signed the form after indicating that he wished to waive his right to a hearing before an immigration judge and return to his country. *See Form I-826* dated September 16, 1997. On September 18, 1997, the applicant was transported to Brownsville, Texas, where he crossed the border to Mexico and thus effected a "witnessed voluntary departure." He returned to the United States without inspection in about October 1997 and has remained in the United States since that date.

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.

The Service Center Director found that the applicant was inadmissible under section 212(a)(6)(C)(i) because he provided the INS with a false name and stated he was a citizen and national of Mexico. *See Decision of the Service Center Director denying the applicant's Application to Request Permanent Residence or Adjust Status (Form I-485) dated May 8, 2006.* The decision states, "Based on this statement, you were granted voluntary departure to the country of Mexico instead of your country of nationality, Ecuador." *Id.*

In determining whether the misrepresentation of the applicant's identity and nationality is material, it must be determined whether this concealment had "a natural tendency to influence the decision, . . . sufficient to raise a fair inference that a statutory disqualifying fact actually existed." *See Kungys v. United States*, 485 U.S. 759 (1988). In addition, the Attorney General has established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . 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 a proper determination that he be excluded. *See Matter of Gilikevorkian*, 14 I&N Dec. 454, 455 (BIA 1973) (citing *Matter of S- and B-C-*, 9 I&N Dec 436, 447 (BIA 1960 AG 1961)).

The applicant was granted voluntary departure after admitting that he was unlawfully present in the United States and waiving his right to a hearing before an immigration judge. There is no indication on the record that the applicant was granted voluntary departure because he stated he was a Mexican national, and that this relief would not have been granted if he had stated he was a citizen and national of Ecuador. The AAO notes that because of the misrepresentation as to his nationality, the applicant's request for voluntary departure appears to have been processed in an expedited manner, and he was therefore held in INS custody for only two days.<sup>1</sup> Further, the applicant was transported to Brownsville, Texas and permitted to travel to Mexico from there because he had claimed to be a citizen of that country. The applicant's misrepresentation therefore affected the manner and speed with which his "witnessed voluntary departure" was conducted. There is no evidence, however, that he would not have been granted the benefit of voluntary departure by the INS if he had stated truthfully that he was citizen of Ecuador.

According to the test established in *Matter of S- and B-C-*, *supra*, the concealment of the applicant's identity is not material because the applicant would have been eligible for voluntary departure regardless of his nationality. There is no indication that providing his true name and nationality would have revealed a ground of inadmissibility or ineligibility for any benefit sought. Further, the misrepresentation is not material under the second part of the test because use of his false identity did not shut off a line of inquiry that would have

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<sup>1</sup> It appears the applicant was able to depart the United States into Mexico without a passport or other travel document because he claimed to be a Mexican citizen. A witnessed voluntary departure for a national of another country would require a travel document and the applicant's departure to Ecuador would thus have not occurred until a travel document was obtained.

resulted in a finding of inadmissibility or ineligibility for any immigration benefit sought. 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, supra.* *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-*, *supra*.

Based on the record, the AAO finds that the applicant, in falsely claiming to be a national and citizen of Mexico, did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. He is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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 as moot.

**ORDER:** The appeal is dismissed as moot.