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U.S. Citizenship
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FILE: [REDACTED] Office: BALTIMORE, MARYLAND

Date: **DEC 16 2008**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife, daughter, and step-daughter in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated August 28, 2006.

On appeal, counsel contends that the applicant's wife would suffer extreme hardship if he were refused admission to the United States.

Section 212(a)(6)(C)(i) of the Act provides:

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.

After a complete review of the record, the AAO concludes that there is no evidence the applicant committed fraud or willfully misrepresented a material fact in order to procure an immigration benefit. The only evidence of misrepresentation in the record is a single reference made by counsel in the applicant's waiver application, stating that the applicant "misrepresented a material fact when he filed an asylum application in which the dates of events occurred at a different time." *Brief in Support of Application for Waiver Under Section 212(i)*, undated. A misrepresentation is generally material only if, as a result of the misrepresentation, 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); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961). In this case, there is no evidence the applicant received an immigration benefit from his misrepresentation. The applicant was not granted asylum, and, even though he was granted work permits, there is no evidence he obtained them by fraud. In addition, the applicant was never interviewed for his asylum application. Even assuming he deliberately misrepresented the dates of events in his asylum application, without more information, the AAO is not in the position to conclude that the misrepresentation was material. Indeed, discrepancies in dates in an asylum application have been described as "minor"

and “trivial.” See, e.g., *Vilorio-Lopez v. INS*, 852 F.2d 1137, 1142 (9th Cir. 1988) (“Minor inconsistencies in the record such as discrepancies in dates . . . reveal nothing about an asylum applicant’s fear for his safety”); *Martinez-Sanchez v. INS*, 794 F.2d 1396, 1400 (9th Cir. 1986) (describing inconsistencies in dates as “trivial errors”).

Therefore, the AAO finds that the district director erred in finding that the applicant willfully misrepresented a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the district director correctly assessed hardship to the applicant’s spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.