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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, ILLINOIS

Date:

SEP 04 2009

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,  
8 U.S.C. § 1182(i), of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

[REDACTED]

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.

John F. Grissom,  
Acting Chief Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant, [REDACTED], is a native and citizen of the Philippines who was found to be inadmissible to the United States under inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility under section 212(i) of the Act so as to remain in the United States with his naturalized citizen spouse. The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005. The applicant submitted an appeal.

On appeal, counsel states that the applicant is not inadmissible under section 212(a)(6)(C) of the Act, as the statements made by the applicant to law enforcement officials were not material misrepresentations that would render him unable to adjust status. Counsel states that if the statements constitute material misrepresentations, the submitted documentation in support of the waiver application established extreme hardship to the applicant's wife.

The AAO will first address the finding of inadmissibility.

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

- (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.

United States Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States on a valid B/2 tourist visa on November 23, 1989 at the Los Angeles, California, port of entry. He was arrested by police in Washington State in connection with a shooting and gave a false identity to the police. On February 23, 1990, while in the Oak Harbor Jail, the applicant was interviewed by U.S. Border Patrol agents. In a written statement dated November 24, 2003, the applicant states that he told the border patrol agents his name was [REDACTED] that he was born in the Philippines on May 5, 1955, and that he came to the United States in 1986 to meet his fiancé, but she did not meet him at the airport. A Form I-213, Record of Deportable Alien dated February 23, 1990 confirms this information and further notes that the applicant was released to the Border Patrol with no criminal charges pending. Based upon the applicant's assertions, he was determined to be in the United States illegally and ordered to leave the

United States at his own expense no later than March 2, 1990. *See* Form I-210 dated February 23, 1990.

The district director found that the applicant's false statements were material misrepresentations in that they were made to conceal the applicant's identity and his manner of entry into the United States and that they had a natural tendency to affect the official decision.

To find [REDACTED] inadmissible under section 212(a)(6)(C)(i) of the Act, his failure to disclose his true identity and manner of entry into the United States must be a material misrepresentation and by that misrepresentation he must have sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961), discusses inadmissibility based on misrepresentation. In *Matter of S- and B-C-*, the Attorney General indicates that a misrepresentation made in connection with an application for visa or other documents, or with 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 result in proper determination that he be excluded.

The statutory provision of section 212(a)(6)(C)(i) of the Act renders inadmissible 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 the Act.

The applicant's misrepresentation was willful in that it was deliberately made with knowledge of its falsity. His misrepresentation, however, was not made in connection with an application for visa or other documents, for entry or admission into the United States, or to obtain some other immigration benefit.

The AAO further finds that the misrepresentation was not material. The applicant would not have been excludable based on the true facts. He was in the United States legally on an unexpired tourist visa. As [REDACTED] the applicant was considered to be deportable. Had the applicant used his true name and manner of entry the resultant investigation would have revealed that he was not deportable. The applicant entered the United States on a visitor's visa and was in an authorized period of stay pursuant to his nonimmigrant B/2 visa at the time he gave the false identity.

The facts in *Matter of B-C-* are relevant here. In *Matter of B-C-*, the Attorney General found that an alien's misrepresentations of his and his wife's identity in obtaining agricultural worker's permits and his use of an alias in connection with entries on those permits had shut off investigation at that time. However, the Attorney General found that nothing in the record indicated that if the alien had used the true name of himself and his wife the resultant investigation would have revealed a ground of exclusion. The Attorney General stated that the alien's "use of his nephew's name had no tendency to procure a result which he might not have procured under his own name." Consequently,

the Attorney General did not find that the alien's misrepresentation of his and his wife's identity in obtaining agricultural worker's permits was material. *Matter of S- and B-C-* at 451-52.

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 US 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) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

Here, nothing in the record indicates that if the alien had used his true name the resultant investigation would have revealed a ground of inadmissibility or that he received a benefit for which he would not otherwise been eligible. In fact, it was the use of an alias and fraudulent story of his entry that resulted in his being found to be in the United States illegally.

Based upon the foregoing discussion, the AAO finds that the district director erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The appeal is dismissed as the applicant is not inadmissible and underlying waiver application is moot.

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