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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: SACRAMENTO

Date: **FEB 12 2010**

IN RE: [REDACTED]

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:

[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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Sacramento, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn, the appeal will be dismissed as moot, and the adjustment of status application will be reopened for continued processing.

The applicant, [REDACTED], is a native and citizen of the Philippines. He 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 having a fraudulent temporary I-551 stamp placed in his passport. The applicant 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 U.S. citizen spouse.

The Field Office Director concluded that the applicant established that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, but denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion.

On appeal, counsel asserts that the applicant has family ties, long term residence and a history of stable employment in the United States. Counsel states that the applicant has presented evidence of his good character in the form of affidavits from family, friends and community representatives. Counsel states that the applicant has presented evidence of hardship to his U.S. citizen family members if he is removed from United States. Counsel states that the applicant's misrepresentation "falls on the low end of the spectrum of activities set out in 212(a)(6)(C)(i)" of the Act. Finally, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because the applicant's act of procuring a counterfeit stamp does not fall within the scope of the statute. Counsel states that the applicant has never used the counterfeit stamp to procure "documentation" or garner a "benefit" under the Act.

In support of the application, the record contains, but is not limited to, a brief from counsel, financial documentation, medical documentation, statements from the applicant and his spouse, supporting letters from friends and family members, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [*Secretary*], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is

the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In denying the applicant's waiver application, the Field Office Director noted that the record shows that in 1993 the applicant paid an unnamed immigration consultant \$3,000 to place a fraudulent temporary I-551 stamp in his passport. The director determined that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for this reason. *See Decision of the Field Office Director, December 3, 2008.*

The AAO notes that the director's decision provides a fairly lengthy discussion of the finding of inadmissibility in this case. On appeal, counsel addresses the director's findings and asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because the applicant's act of procuring a counterfeit stamp does not fall within the scope of the statute. Counsel contends that the applicant has never used the counterfeit stamp to procure "documentation" or garner a "benefit" under the Act. Instead of offering a full recount of the director's findings and counsel's rebuttal, the AAO will review the record of proceedings and issue a *de novo* determination of the applicant's inadmissibility.

Upon review of the record, the AAO finds that the issues presented in this case are threefold. Namely, whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for: 1) procuring from an immigration consultant a fraudulent temporary I-551 stamp in his passport; 2) using the I-551 stamp in a fraudulent manner; and/or 3) making material misrepresentations regarding his I-551 stamp.

The first issue, whether an alien can be found inadmissible for the act of purchasing from an "immigration consultant" a fraudulent temporary I-551 stamp, has been addressed in several Board of Immigration Appeals (BIA) decisions. In *Matter of Y-G-*, the BIA noted, "It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found." 20 I&N Dec. 794, 796 (BIA 1994)(citations omitted). Similarly, in *Matter of L-L-*, the BIA stated, "The applicant obtained his entry document by purchase rather than by falsely stating a material fact to an immigration officer. The statute . . . as we read it, contemplates an alien 'who seeks to procure, or has sought to procure, or has procured a visa or other documentation ... by fraud or by willfully misrepresenting a material fact' to an officer of the United States Government duly authorized to issue said documentation, and not to an individual who has no official connection with the Government and, therefore, not authorized to issue visas or other entry documents." 9 I. & N. Dec. 324, 327 (BIA 1961). In the present case, there is no evidence in the record that the applicant practiced fraud or made willful misrepresentations to an authorized official of the United States government in order to procure the temporary I-551 stamp in his passport. The record establishes that the applicant paid an unauthorized immigration consultant \$3,000 for the issuance of the stamp.

Accordingly, the applicant cannot be found inadmissible under section 212(a)(6)(C)(i) of the Act solely for procuring the counterfeit temporary I-551 stamp.

The second issue is whether the applicant can be found inadmissible for using the temporary I-551 stamp in a fraudulent manner. In the applicant's March 8, 2008 statement he claims that he never used the I-551 stamp to obtain immigration benefits "such as to travel or apply for a [permanent resident] card," and he has never represented himself as a permanent resident. In denying the application, the director noted:

[I]t is not credible that having paid \$3,000 for this stamp, you would not have ever used it for any purpose. This is especially incredible when it is noted that shortly after acquiring this stamp you began to apply for employment and were unlawfully hired by the State of California in 1994.

The legacy Immigration and Naturalization Service (INS) General Counsel's Office addressed in an April 30, 1991 published legal opinion the issue of whether an alien who presents counterfeit documents in completing an Employment Eligibility Verification Form (Form I-9) is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides:

For two reasons, we conclude that an alien's false statements on Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any particular individual involves a private employment contract. Thus, false statements on Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Genco Op., Paul W. Virtue, Act. Gen. Co., *Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9)*, No. 91-39, 2 (April 30, 1991).

Similarly, the Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted:

The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

22 I&N Dec. 560, 571 (BIA 1999)(citations omitted).

Therefore, the applicant cannot be found inadmissible under section 212(a)(6)(C)(i) of the Act if he used his counterfeit temporary I-551 stamp as evidence of his eligibility for employment with the State of California.

We will now address the final issue at hand – whether the applicant has, during the adjudication of his application for adjustment of status (Form I-485), made willful misrepresentations to an immigration officer regarding his purchase and use of the counterfeit temporary I-551 stamp, in an effort to circumvent a finding of inadmissibility. In denying the application as a matter of discretion, the director’s denial notice discusses the applicant’s “on-going attempt to gain an immigration benefit through misrepresentation.” The director provided the following account of the adverse factors in this case:

You have claimed that you never used the fraudulent I-551 stamp for any purpose. You have stated that when you applied for employment with the State of California in 1994, shortly after acquiring the fraudulent temporary I-551 stamp, you were required to show only a Social Security card and Driver’s License. . . . You have stated that you were issued a Social Security card when you were an F-1 student. An F-1 student would have been issued a card stating that the card was not valid for employment. . . . The USCIS, however, has acquired a blank I-9 version that you would have been required to submit in 1994. . . . When coupled with the other known facts in this case, this blank I-9 is clear and convincing evidence that you fraudulently attested, under penalty of perjury, either that you were a citizen, a legal permanent resident, or an alien authorized to work until a specified date. That you have remained in employment with the State of California until the present date, indicates that you did not check the third box indicating employment authorization until a specific date, but rather that you checked one of the first two blocks. Considering the fraudulent I-551 stamp in your passport, it is probable that when you filled out your form I-9 in 1994 you presented the stamp and claimed to be a legal permanent resident. In any case, there is no doubt that you acquired employment with the States of California by misrepresenting your immigration status under penalty of perjury.

The principal elements of a misrepresentation that renders an alien inadmissible section 212(a)(6)(C)(i) of the Act are willfulness and materiality. The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as “(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.” 9 I&N Dec. 436, 447 (BIA 1960). As discussed above, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for having purchased a counterfeit temporary I-551 stamp. Nor would he be found inadmissible under section 212(a)(6)(C)(i) if he used the stamp for employment. However, the use of a counterfeit temporary I-551 stamp as evidence of employment eligibility on the Form I-9 is punishable under section 274C of the Act, 8 U.S.C. § 1324c. An alien who is the subject of a final order for a violation of section 274C is inadmissible. Section 212(a)(6)(F) of the Act, 8 U.S.C. §

1182(a)(6)(F). The question is whether the applicant misrepresented the use of his I-551 stamp in order to shut off a line of inquiry which may have resulted in a proper determination that he be subject to the penalties under section 274C.

The AAO has reviewed the basis for the director's denial and finds that there is insufficient evidence in the record that indicates the applicant has made willful misrepresentations in an attempt to circumvent a finding of inadmissibility. In *Matter of G-G-*, the BIA determined that for a statement to be considered a willful misrepresentation, it "must be made with knowledge of its falsity . . . so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled." 7 I&N Dec. 161, 164 (BIA 1956). The director's determination that the applicant must have used the counterfeit I-551 as evidence of employment eligibility on his Form I-9 appears to be a conclusion reached by inference or deduction, not direct evidence. The inference is only valid if there is evidence that the applicant's Form I-9 was properly completed by the California Department of Health Services. However, such evidence is not available in this case. The record contains a letter, dated October 8, 2008, from [REDACTED] Branch of the California Department of Public Health, which states, "After an exhaustive search within both departments, we are unable to locate the I-9 that [REDACTED] completed when he was hired by the then Department of Health Services on July 5, 1994." The applicant indicated in his March 8, 2008 statement that he was only requested to show his Social Security Number and Driver's License when he applied for his position. There is nothing in the record to show that this statement is a willful misrepresentation of the events that took place when he was hired in July 1994. Per the Supreme Court's holding in *Kungys v. United States*, a finding of willful misrepresentation of a material fact rendering an alien inadmissible under section 212(a)(6)(C)(i) must be based on "clear, unequivocal, and convincing evidence." See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988). Therefore, the AAO does not find that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts to obtain a benefit under the Act.

A review of the documentation in the record fails to establish that the applicant is inadmissible under 212(a)(6)(C) of the Act. Accordingly, the applicant is not inadmissible and the director's findings regarding a misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The applicant's waiver application is thus moot and the appeal will be dismissed.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.