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



U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]

Office: ATLANTA, GA

Date:

JAN 08 2010

IN RE: Applicant: [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:

SELF-REPRESENTED

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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot.

The applicant, a native and citizen of Trinidad and Tobago, married [REDACTED], a U.S. citizen, on May 10, 2006. *See Certificate of Marriage*, dated May 10, 2006. Subsequently, in October 2006, [REDACTED] filed a Form I-130, Petition for Alien Relative (Form I-130) on behalf of the applicant, and concurrently, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The record indicates that the applicant's previous marriage, to [REDACTED] a national of Trinidad and Tobago, in June 1998, was not disclosed on the Form I-130, on any documentation pertaining to the applicant's adjustment of status application, and/or during the applicant's adjustment of status interview on April 16, 2007.<sup>1</sup> Based on the applicant's failure to disclose his previous marriage, it was determined that the applicant was 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), for having attempted to procure an immigrant benefit by willful misrepresentation. 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, children and step-children.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 16, 2009.

In support of the appeal, the applicant submits the following: a statement from the applicant's spouse, dated May 14, 2009; support letters from friends and family; and financial documentation. 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

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<sup>1</sup> A Default Judgment of Divorce has been provided confirming that the applicant and [REDACTED] were divorced on March 24, 2006. *See Default Judgment of Divorce, State of Michigan in the Circuit Court for the County of Wayne*, dated March 24, 2005.

In a letter provided by [REDACTED] and the applicant, they assert that the failure to disclose the applicant's previous marriage on immigration forms and during the adjustment of status interview was because "we [the applicant and his spouse] both unknowingly believed that his [the applicant's] marriage in Trinidad was not valid in America and did not disclose this for that reason.... We were not trying to deceive the immigration officer. This was done as an error in judgment...." *Letter from [REDACTED] and [REDACTED]*, dated June 1, 2008.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

*DOS Foreign Affairs Manual*, § 40.63 N2.

The Department of State's Foreign Affairs Manual [FAM] further provides, in pertinent part:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....

"A misrepresentation made in connection with an application for a 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 have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

*DOS Foreign Affairs Manual*, § 40.63 N. 6.1. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

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 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) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961). If the applicant had disclosed his prior marriage on his Form I-130 he would still have been eligible for the benefit as he had divorced his prior spouse before marrying [REDACTED]. By omitting this fact he did not receive a benefit for which he was not eligible.

The AAO finds that the applicant's failure to disclose his previous marriage was not a material misrepresentation. As referenced above, the fact that the applicant had previously been married would not have resulted in his being denied the benefit. Thus, the AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i)

of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.