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

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U.S. Citizenship and Immigration Services

H2
H5

[redacted]

FILE: [redacted] Office: NEW DEHLI, INDIA Date: JUN 09 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, New Dehli, India, and is now before the Administrative Appeals Office (AAO) on appeal. The acting field office director's decision will be withdrawn and the matter remanded for further action consistent with this decision.

The applicant is a native and citizen of India who was found to be inadmissible to the United States 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 admission into the United States by fraud or willful misrepresentation in connection with a Petition for a Nonimmigrant Worker (Form I-129) and an H-1B visa application in 2000. The applicant is the son of a U.S. citizen and a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated January 30, 2008, the acting field office director found that in 2000 the applicant misrepresented material facts on his application for a nonimmigrant visa. The acting field office director concluded that the record contained no credible evidence to reflect extreme hardship to the applicant's qualifying relatives. The application was denied accordingly.

In a statement dated February 16, 2008, the applicant states that as his parents' oldest and only son it is his duty to care for them given their poor health, low income, and old age. He states that his only sibling is his sister, who lives in Boston. The applicant submits additional documentation on appeal with particular emphasis on the medical conditions of his parents. Finally, the applicant indicates that he was not aware of any incorrect or fake documents submitted on his behalf in connection with his H1B visa application. He states that he was completely misguided by an agent and that the crime was committed by the company in the United States.

The record indicates that on October 12, 2007 the applicant was interviewed at the U.S. Consulate in Mumbai where the consular officer obtained a sworn statement. The applicant stated that in January 2000 he attended the interview for his H-1B visa and, through an interpreter, he stated that a friend arranged for his H-1B visa application. He indicated that he was then told that his application was fraudulent and was asked to return to the consulate in three days. The applicant did not return and was found to have attempted to procure an H-1B visa through fraud. In the sworn statement, the applicant stated that [redacted] filed his Form I-129 and H-1B visa application. He stated that he believed his visa application was denied because he did not know English. He stated that he wrote a letter in English that he was told was to be an apology letter, but that because it was in English, he does not know what the letter stated. The applicant further contended that had he known that he would have to do his interview in English, he would not have applied for the visa.

The record includes an unsigned letter dated November 15, 1998 from [redacted] of [redacted] that was submitted in support of the applicant's Form I-129. The letter indicated that the applicant would be working with the company as a Program Analyst. Mr. [redacted] also stated that the applicant's background made him well-qualified for the position. The applicant's qualifications are listed as a Bachelor's Degree in Commerce, a Diploma in Computer Applications, and employment as a Software Programmer at the time the petition was filed. The

AAO notes the applicant indicated on his current immigrant visa application that he holds a Bachelor's Degree in Commerce. In addition, the Form I-129 submitted by [redacted] was never signed by the applicant. The only required signatures on the Form I-129 were the signatures from the appropriate company officials. Furthermore, although service records indicate that the applicant was found to be not credible in his interview regarding the possible fraudulent Form I-129 and H-1B visa application, no other details are provided concerning the fraud or willful misrepresentation of a material fact allegedly committed by the applicant.

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.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. A misrepresentaton 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). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The Board of Immigration Appeals 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). In finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act the acting field office director must show that the applicant made a misrepresentation that was willful and material.

Because the acting field office director's decision failed to support the finding of inadmissibility under section 212(a)(6)(C) of the Act with an explanation of the actions taken by the applicant amounting to a willful misrepresentation of a material fact and the evidence in the record supporting this determination, the AAO remands the present matter to the acting field office director for a new decision. If the acting field office director is unable to support the finding of inadmissibility as discussed herein, that finding must be withdrawn. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review in accordance with the procedures set forth at 8 C.F.R. § 103.4.

ORDER: The acting field officer director's decision is withdrawn and the matter remanded for further action consistent with the present decision.