

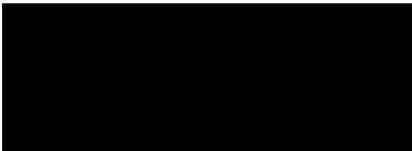
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

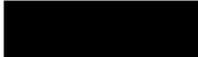


**U.S. Citizenship
and Immigration
Services**



H5

DATE: **APR 10 2012** OFFICE: SANTO DOMINGO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant, a native and citizen of the Dominican Republic, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her U.S. citizen spouse.

On December 8, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute.

On appeal, the applicant states that the Field Office Director erred in denying the application for a waiver of inadmissibility.

In support of the waiver application, the record includes, but is not limited to, a letter from the applicant's spouse, a letter from the applicant's spouse's doctor, biographical information for the applicant and her spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(6)(C), which provides, in pertinent part:

- (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 applicant presented a fraudulently stamped passport to U.S. Customs and Border Protection on March 5, 2004. After being referred to secondary inspection, the applicant stated that she paid an unknown individual to stamp her passport so that it appeared that she did not remain in the United States more than three months on her previous visit, even though the record illustrates that the applicant had been allotted six months to remain in the United States and she departed within those six months. The applicant was found to be inadmissible under INA § 212(a)(6)(C)(i) for fraud or material misrepresentation and was ordered removed under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). The applicant is no longer inadmissible under INA § 212(a)(9)(A), for having been expeditiously removed as it has been five years since the date of her removal.

A misrepresentation is generally material only if by making it the alien received a benefit for which she 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, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for 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 have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

In this case, had the true facts been disclosed at the time of the applicant's application for admission to the United States as a visitor, she would not have been inadmissible. The applicant was admitted to the United States on January 23, 2003 as a B2 visitor with permission to remain in the United States until July 20, 2003. The record illustrates that she departed the United States on May 17, 2003. Although, the applicant obtained a fraudulent stamp with a date of February 22, 2003, apparently at the suggestion of an immigration officer from the Dominican Republic, to show that she had remained in the United States for a shorter period of time than she had actually stayed, the applicant did not overstay her permitted time in the United States. Moreover, the record does not illustrate that the applicant had previously overstayed on any of her previous admissions to the United States and there is no evidence that she had immigrant intent when attempting to enter the United States on her B2 visa. Because the applicant was not inadmissible on the true facts, the AAO concludes that the applicant's misrepresentation was not material. Consequently, the applicant is not inadmissible under INA § 212(a)(6)(C)(i) for a willful misrepresentation of a material fact.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether she has established extreme hardship to her U.S. citizen husband under section 212(i) of the Act. Accordingly, the appeal will be dismissed as the applicant is not inadmissible and the waiver application is moot.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed.