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



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

[REDACTED]

HS

DATE: **AUG 13 2012**

OFFICE: ALBANY

FILE: [REDACTED]

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:

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 cursive script, appearing to read "Michael J. Rhew".

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. As the record does not support the finding of inadmissibility, the waiver application is unnecessary and the appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant, on August 28, 1996, was notified of visa availability under the 1997 Diversity Visa Program. The applicant accordingly filed a Form I-485, Application to Register Permanent Residence or Adjust Status on October 30, 1996 with a letter from the deputy commissioner of police of Guyana, purportedly submitted on behalf of the applicant. After investigation, the submitted letter was determined to be a forgery. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his United States citizen spouse and child¹.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 3, 2010.

On appeal, counsel for the applicant asserts that the applicant has rebutted the finding of misrepresentation and that the alleged misrepresentation would not even be material so that a waiver of inadmissibility is unnecessary. Counsel further asserts that the Field Office Director failed to consider the cumulative effects of the hardship upon the applicant's spouse and child.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documentation concerning his spouse and child, financial documents, affidavits from himself and his spouse, and background information concerning Guyana. 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:

- (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

¹ It is noted that the Field Office Director did not determine that the applicant's January 16, 2007 conviction pursuant to section 245.01 of the New York Penal Law (NYPL), Exposure of a Person, would subject him to the inadmissibility provisions of section 212(a)(2)(A)(i)(I) of the Act. The AAO concurs that the applicant's conviction would not subject him to inadmissibility pursuant to the Act. Under section 245.01 of the NYPL, a person is guilty of Exposure of a Person if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. It is noted that the Board of Immigration Appeals considered a similar Wisconsin statute and found that it did not constitute moral turpitude because the language of the statute does not require specific intent or a vicious motive or corrupt mind. *Matter of Mueller*, 11 I&N Dec. 268 (BIA 1965). Further, even if the applicant's conviction was a crime of moral turpitude, it would likely fall within the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act.

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

Section 212(i) of the Act provides:

- (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 immigrant 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...

Counsel for the applicant asserts that the applicant's alleged 1997 misrepresentations were not material because he would have met the diversity visa requirements even without the submission of the forged letter. The record reflects that the applicant submitted a letter purportedly signed by the deputy commissioner of police of Guyana, [REDACTED], stating that the applicant served honorably as a police officer and successfully completed training programs spanning a total of over two years. After investigation, it was determined that the letter submitted by the applicant is a forgery. [REDACTED], in a letter to the consul on May 6, 1997, stated that he is the only deputy commissioner with his name in the Guyana police and that he had never seen the letter submitted by the applicant. The Deputy Commissioner further stated that the applicant was to be charged with breach of the traffic laws and acts against discipline when he absconded from the Guyana police force on September 16, 1995. According to the Guyana police force, the applicant was found to have illegally withdrawn from the force, evaluated as unsatisfactory, and there was no evidence of his attendance of any specialized courses.

Counsel for the applicant contends that the applicant's position as a police officer alone met the requirements of the diversity visa lottery because he had a specific vocational preparation (SVP) of six on O*Net Online. However, the AAO notes that the Foreign Affairs Manual states that all applicants qualifying for a diversity visa based upon work experience must have experience in an occupation with a SVP of seven or higher. 9 FAM 42.33 N8.2. A police officer, 33-3051.01 in O*Net Online is associated with a SVP of six to less than seven.

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). 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 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).

The record reflects that the applicant joined the police force in Guyana on February 14, 1989. The applicant claims that he worked as a police officer from that date until his resignation on November 14, 1995. Deputy Commissioner ██████ asserted that the applicant absconded from the police force on September 16, 1995. However, it is not disputed, and there is ample credible evidence to support, that the applicant served as a police officer for over six years and sought to qualify for a diversity visa based upon those years of experience. The record reflects that the applicant obtained valid documentation to prove his work experience, and to the extent the applicant misrepresented facts, these concerned additional training and the manner of his departure from his employment as a police officer, neither of which altered his eligibility for the benefit sought. Although Deputy Commissioner ██████ indicated that the applicant was to be charged with breach of the traffic laws and acts against discipline, there is no evidence that any charges were brought against the applicant, or that any such charges would have been criminal rather than administrative in nature.

As noted above, counsel has asserted that the applicant required only a SVP of six to qualify for the diversity visa, though we are uncertain as that requirement given that the current requirement is an SVP of seven or greater. Nevertheless, it is not essential that we resolve that question, as the misrepresentations presented in the forged document, based on our review of O*Net Online employment profiles, would not have altered the applicant's SVP. If the requirement was seven or greater, the applicant would not have been eligible on the true facts. Had it been six, the applicant would have been eligible on the true facts. But the misrepresentations would not have rendered the applicant eligible for a benefit for which he was otherwise not eligible. The Foreign Affairs Manual does not reveal any other valid basis, even discretionary, upon which the particular factual misrepresentations at issue here were "predictably capable of affecting, that is, having a natural tendency to affect, the official decision." *Kungys, supra*, at 771-72. As such, we find that there is not "clear, unequivocal, and convincing evidence" to support a finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed because the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and an application for a waiver of inadmissibility is therefore not required.

ORDER: As the applicant is not inadmissible, the waiver application is unnecessary. The appeal will be dismissed and the matter returned to the Field Office Director for further action consistent with this decision.