



U.S. Citizenship  
and Immigration  
Services



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DATE: **DEC 18 2012**

Office: BANGKOK, THAILAND

FILE:

IN RE:

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:



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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(6)(E)(i), for seeking to procure an immigration benefit through fraud or misrepresentation and for alien smuggling. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found the applicant inadmissible under section 212(a)(6)(E)(i) of the Act for knowingly engaging in alien smuggling, and not under section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit through fraud or misrepresentation. *See Decision of the District Director* dated November 30, 2010. The director concluded that the applicant was ineligible for a waiver of the alien smuggling grounds of inadmissibility. *Id.* Further, the director found that “even if [the applicant] would otherwise be eligible for a waiver,” it would be denied as a matter of discretion. *Id.*

On appeal, the applicant, through counsel, claims that he did not knowingly engage in alien smuggling. *See Appeal Brief* at 4. Counsel explains that the applicant, out of respect for his father, did not correct his father’s misrepresentations to the immigration officials and had no knowledge of his father’s intentions to aid another to illegally enter the United States. *Id.* Counsel instead states that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and eligible for a waiver under section 212(i) of the Act on the basis of extreme hardship to his wife. *Id.* At 5-9.

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 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 Secretary of Homeland Security (the Secretary)] may, in the discretion of the [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 [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.

Section 212(a)(6)(E) of the Act provides, in relevant part:

*Smugglers*

- (i) *In general.* Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

\* \* \*

- (iii) *Waiver authorized.* For provision authorizing waiver of clause (i), see subsection (d)(11).<sup>1</sup>

In the present case, the record reflects, and the applicant does not dispute, that he falsely stated that [REDACTED] was his father's son during an interview before an immigration official in 2003. The applicant claims that in so doing he did not "knowingly" assist in [REDACTED] attempted illegal entry into the United States. Rather, the applicant maintains that he made a misrepresentation of a fact and should be deemed inadmissible under section 212(a)(6)(C) of the Act, and eligible for a waiver under section 212(i) of the Act.

An alien is inadmissible under section 212(a)(6)(C) of the Act if he or she makes a material misrepresentation. 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 director was correct in determining that the applicant's misrepresentation was not material, as it was unrelated to his application and irrelevant to the question of his eligibility for an immigrant visa.

However, the applicant is inadmissible under section 212(a)(6)(E) of the Act for knowingly encouraging, inducing, assisting, abetting, or aiding an alien to enter or try to enter the United

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<sup>1</sup> Section 212(a)(11) of the Act provides for a discretionary, humanitarian waiver to assure family unity, or when it is otherwise in the public interest, if the alien has encouraged, induced, assisted, abetted, or aided an individual who, at the time of the action, was the alien's spouse, parent, son or daughter, to enter the United States in violation of law. *See Matter of Farias*, 21 I&N Dec. 269, 281-282 (BIA 1997).

States. The applicant provided a materially false statement to an immigration official in support of ██████████ application for entry into the United States. The applicant does not claim that he thought ██████████ was eligible for entry into the United States as the son of his father. Rather, he states that his motive for misrepresenting ██████████ relationship to him as his father's son was to not contradict his father. A reasonable person in the applicant's circumstances would conclude that a materially false misrepresentation such as the applicant's would influence the adjudication of ██████████ application for entry into the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(E) of the Act. As noted by the director, the applicant is ineligible for a waiver of the alien smuggling ground of inadmissibility.

The burden of proving eligibility in these proceedings remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

**ORDER:** The appeal is dismissed.