

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



U.S. Citizenship  
and Immigration  
Services



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DATE: DEC 20 2012

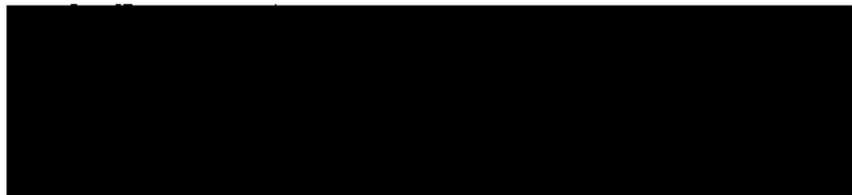
OFFICE: LAS VEGAS

FILE:

IN RE: Applicant:

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. 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 Field Office Director, Las Vegas, Nevada, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion. The motion is granted and the underlying waiver application remains denied.

The applicant is a native and citizen of the Philippines 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 procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He contends that he is not inadmissible but, alternatively, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director found the misrepresentation to be material, concluded the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the application accordingly. *See Decision of Field Office Director, December 17, 2009.* Also finding the inadmissibility to apply, the AAO found the applicant failed to establish extreme hardship would be imposed on a qualifying relative and dismissed the applicant's appeal. *See Decision of the AAO, April 11, 2011.*

In support of the motion to reconsider, the applicant's counsel submits a brief contending that the AAO erred in finding the applicant inadmissible as a matter of law because, on the one hand, the applicant's misrepresentation was not willful and, on the other, even if willful it is not material under the doctrine of "preconceived immigrant intent." Counsel asserts that our prior dismissal failed to distinguish the applicant's intent in coming to the United States to marry his fiancée from the applicant's intent to remain here permanently and, moreover, that his preconceived immigrant intent may no longer be used as the basis for an inadmissibility finding. No new evidence concerning hardship to a qualifying relative is submitted. Therefore, we limit review to our prior inadmissibility finding and note that the waiver determination is not at issue. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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 record reflects that, on November 15, 2005, the applicant entered the United States in B-2 status after telling the immigration official at the port of entry that he was entering for tourism, while his true purpose for visiting the country was to marry his fiancée, and that they married on January 1, 2006. He stated that he concealed his intent to marry for fear that it would, if known, result in his being denied admission. As a result of this misrepresentation, the field office director found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Counsel asserts that the applicant's misrepresentation was not willful. However, the record reflects that the applicant's concealment of the true purpose of his visit represents a willful misrepresentation employed to procure admission to the United States where the applicant recognized that a truthful response would jeopardize his U.S. admission. We note, too, that the record contradicts the applicant's contention regarding lack of immigrant intent, for he has remained here since November 2005. This is not a case where he came to the United States, married, and departed. We analyzed this issue extensively in our prior decision, and counsel has cited no controlling authority to contradict our conclusion regarding the applicant's immigrant intent, as shown by the factual record.

Counsel asserts that even if willful, the applicant's concealment of his intent to marry was not a material misrepresentation under the doctrine of "preconceived immigrant intent." A misrepresentation 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 that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). The record establishes that his misrepresentation is material for having precisely the desired effect of preventing the inspector from undertaking further inquiry into the applicant's post-wedding plans. Counsel asserts that, because the inspector could have exercised discretion to admit the applicant even had he divulged his marriage plans, failure to divulge those plans was not material to the admission decision. However, he is unable to show any pertinent precedent decisions supporting the contention that such a misrepresentation is not material to the ability to procure admission. By not revealing his true intent to marry a lawful permanent resident, the applicant shut off a line of inquiry relevant his eligibility for admission as a visitor that might well have resulted in a proper determination that he be excluded. Inhibiting the inspector's ability to exercise discretion over admission decisions defines the misrepresentation as a material one. See *Kungys v. U.S.*, 485 U.S. 759 (1988) and *Matter of S- and B-C-*, *supra*; see also *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

Counsel also contends that the applicant's misrepresentation is not material because preconceived immigrant intent is insufficient for an inadmissibility finding under the Act. However, the decisions cited by counsel address denial of adjustment of status and find that preconceived intent alone is insufficient to justify a denial as a matter of discretion. See *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980); *Matter of Ibrahim*, 18 I&N Dec. 55 (BIA 1981). The applicant was found inadmissible for misrepresenting his intent to remain in the United States and marry a lawful permanent resident at the time of his inspection and admission as a B2 nonimmigrant visitor. His application for adjustment of status was denied based on this ground of inadmissibility rather than as a matter of discretion, and the cases relied upon by counsel do not preclude a finding that he is inadmissible under section 212(a)(6)(C)(i) of the Act, despite counsel's assertions.

We do not revisit our prior extreme hardship analysis, which is not before us on motion. The brief is limited to the issue of inadmissibility for willful misrepresentation and presents no new assertions regarding hardship.

In discretionary matters, the applicant bears the full burden of proving eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The underlying waiver application remains denied.