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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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Office: CHICAGO

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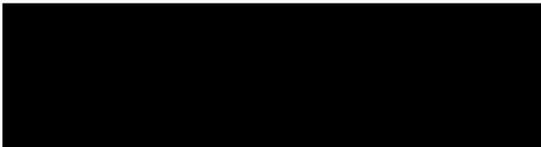
IN RE:



APPLICATION:

Application for Waiver of Ground 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.

Thank you,

for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot. The matter will be returned to the field office director for continued processing.

The record establishes that the applicant is a native of Kuwait and a citizen of Jordan 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 immigration benefits by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen mother.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 13, 2011.

In support of the appeal, the applicant submits the following: a letter from the applicant's U.S. citizen mother, dated June 9, 2011; medical documentation in regards to the applicant's mother; a copy of the applicant's child's U.S. birth certificate; and a letter from the applicant. The entire record was reviewed and considered in rendering this decision.

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 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...

With respect to the finding of inadmissibility under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant married [REDACTED] [REDACTED] in May 1988. In 1991, the applicant and [REDACTED] divorced. In [REDACTED]

March 1993, the applicant and [REDACTED] remarried and have remain married until this time. In February 2001, the applicant's U.S. citizen mother, [REDACTED], filed a Form I-130, Petition for Alien Relative (Form I-130), on behalf of the applicant. The record indicates that the applicant's previous divorce to his current wife was not disclosed on the Form I-130, on any documentation pertaining to the applicant's adjustment of status application, and/or during the applicant's adjustment of status interview on March 16, 2010. Based on the applicant's failure to disclose his previous divorce, it was determined that the applicant was inadmissible 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 immigrant benefits, including permanent residency as the married son of a U.S. citizen and derivative adjustment for [REDACTED] by fraud or willful misrepresentation.

On appeal, the applicant submits a statement. As explained by the applicant,

During my interview on March 16, 2010, I was asked some questions about my marital history. I was under the impression that the questions were pertaining to the period from when the I-130 was filed on my behalf in 2001, until now. I was asked if I had ever been divorced and I answered no. I divorced my current wife 20 years ago and remarried her a little more than 1 year later (way before the I-130 was filed on my behalf). After remarrying my wife in 1993 I had 3 kids with her, all 3 of which were natural born citizens of the U.S. I was divorced from [REDACTED] [REDACTED] 1991, so when I applied for asylum in the U.S. in 1992, I reported myself as divorced from her and submitted a Divorce Certificate. I remarried [REDACTED] in 1993, so when the I-130 was filed on my behalf by my Mother in 2001, my Mother reported me married to her.

Anytime some one is questioned if they are divorced, they usually think of previous marriages and previous wives. I have never had a previous marriage or previous wife. I divorced and remarried the same wife.... I myself submitted the Divorce Certificate to USCIS.... [I]f I knew that the interview was pertaining to my marital history in its entirety (even before the I-130 was filed on my behalf in 2001), and questioning weather (sic) I divorced the same wife I remarried, I would have told the interviewer that I was divorced in the past because I know that she has a copy of my Divorce Certificate on file. It was an honest mistake....

Letter from [REDACTED]

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. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

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 which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The fact that the applicant had been divorced from his current wife from 1991 through 1993 would not have rendered him inadmissible or otherwise ineligible for adjustment or status as the married son of a U.S. citizen, and is therefore not a material fact. Therefore, even if the applicant's failures to disclose his previous divorce were willful, it would not be a material misrepresentation, and the applicant is not inadmissible with respect to this issue. By omitting this fact he did not receive a benefit for which he was not eligible.¹

The AAO finds that the applicant's failure to disclose his previous divorce was not a material misrepresentation. As referenced above, the fact that the applicant had previously been divorced would not have resulted in his being denied permanent residence as the married son of a U.S. citizen. Thus, the AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the instant application for a waiver is declared moot. The field office shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.

¹ The AAO further notes that the applicant would also have been eligible for approval of his Form I-130 and adjustment of status as the unmarried son of a U.S. Citizen even if he had not remarried his spouse in 1993. Any misrepresentation concerning his divorce and remarriage therefore appears to be irrelevant to his own eligibility for these immigration benefits, as an immigrant visa number would have been available to him under either category (married or unmarried son of a U.S. Citizen) on the date he applied for adjustment of status.