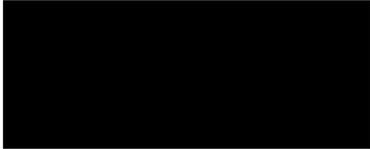


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



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



H5

DATE:

OFFICE: TAMPA

FILE:



IN RE: JUL 31 20



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to Immigration and Nationality Act (the Act) section 212(i); 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,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further evaluation.

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

On March 2, 2011, 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, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and in the alternative, that he has established that his U.S. citizen spouse will suffer from extreme hardship if he is not admitted as a permanent resident.

In support of the waiver application, the record includes, but is not limited to, legal arguments and statements by counsel for the applicant, biographical information for the applicant and his U.S. citizen spouse, statements by the applicant, statements by the applicant's spouse and child, financial records for the applicant and his spouse, medical records for the applicant's child, photographs of the applicant and his family, and records concerning the applicant's arrest record and immigration history in the United States.

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 AAO will first address the question of whether the applicant is admissible to the United States.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, 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.

A misrepresentation is generally material only if by making 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, 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).

The Field Office Director found that the applicant obtained a visa by fraud based on testimony given at the applicant's interview at their office on April 6, 2010. The Field Office Director states that the applicant testified under oath that he obtained a visitor visa to the United States claiming to plan to participate in a cultural tour of the United States with a steel band group from Trinidad and Tobago. The record indicates that the B2 visitor visa in question contains the annotation "CULTURAL TOUR." The Field Office Director states that the applicant admitted under oath that he did not travel to the United States with the musical group, did not travel with the musical group in the United States, and did not take part in any activities related to that musical group in the United States. As a result, the Field Office Director, after consultation with the U.S. Department of State, concluded that the applicant obtained the visitor visa by fraud and was inadmissible under section 212(a)(6)(C) of the Act. The AAO notes that there is no sworn statement or official record in the file of the applicant's statement under oath at his adjustment of status interview or at a nonimmigrant visa interview.

Counsel for the applicant states that the applicant should not be inadmissible under section 212(a)(6)(C) of the Act, as the applicant intended to participate in the cultural tour for which the visitor visa was granted. The applicant states that he was working at a jewelry designer and that one of his clients invited him to join the cultural tour. The applicant states that he did not obtain the visa himself, but rather the client obtained the visa on his behalf. He also states that he intended to participate in the tour, selling jewelry, but that he was never contacted by the group after arriving in the United States. The AAO notes that the applicant has not submitted any corroborating evidence to support his claim that he was invited to participate in the cultural tour.

Because the record does not contain documentation of the applicant's statements under oath regarding his intention when obtaining the visitor visa and when entering the United States on that visa, we find that there is insufficient evidence to support a finding of inadmissibility under section 212(a)(6)(C) of the Act and we remand the case to the Field Office Director for further findings on this matter. Should the Field Office Director find no support for the finding of inadmissibility under section 212(a)(6)(C) of the Act, the Field Office Director will reopen and continue processing of the applicant's Form I-485. Should the Field Office Director find additional support for the finding of inadmissibility, the Field Office Director will issue a new decision on the applicant's Form I-601 application detailing the finding of inadmissibility and

assessing whether the applicant warrants a waiver of this inadmissibility. If the Form I-601 decision is adverse to the applicant, it shall be certified for review to the AAO.

ORDER: The matter is remanded to the Field Office Director for further proceedings consistent with this decision.