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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**

115



DATE: MAR 29 2012 OFFICE: OAKLAND PARK, FL

FILE: [REDACTED]

IN RE: APPLICANT: [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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Handwritten signature of Perry Rhew in black ink.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The applicant is a native and citizen of Cuba who has resided in the United States since July 21, 2006, when he was paroled into the country. The applicant previously applied for adjustment of status under the Cuban Adjustment Act. He 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 sought to procure a benefit provided under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen, and is applying for permanent residence through the Cuban Adjustment Act. The applicant seeks 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 U.S. Citizen spouse.

The Field Office Director concluded that there was insufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 26, 2009.

On appeal, counsel for the applicant contends in the "basis for the appeal or motion" section on the Form I-290B, Notice of Appeal or Motion, that the Field Office Director made a mistake in its determination that the client failed to meet his extreme hardship burden, and that the Field Office Director failed to properly weigh factors which establish extreme hardship. Counsel submits copies of income tax returns, a police clearance letter, the applicant's spouse's certificate of naturalization and marriage certificate, a copy of a lease agreement, letters from family and friends, and a human rights report on Cuba.

The record includes, but is not limited to, the documents listed above, evidence of birth, marriage, divorce, residence, and citizenship, evidence of entry and admission, other applications filed by the applicant, a statement from the applicant's spouse, financial documents, letters from friends and family, and police clearance letters. 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 admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) 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.

In the present case, the record reflects that the applicant, a Cuban national and citizen, married a Colombian woman, [REDACTED] ([REDACTED]). On April 8, 2008 the applicant and his spouse were separately interviewed about the bona fides of their marriage, and were found to have entered the marriage for the primary purpose of circumventing immigration law. The Field Office Director consequently found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a benefit provided under the Act through fraud or misrepresentation. However, 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) (emphasis added). In this case, the applicant was the Cuban citizen through whom [REDACTED] was attempting to receive an immigration benefit as the spouse of an individual eligible for adjustment under the Cuban Adjustment Act of 1966,

Section 1 of the 1966 Act states, in pertinent part:

[N]otwithstanding the provisions of section 245(c) of the [Immigration and Nationality Act] the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the [Secretary of Homeland Security], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever is later. Pub. L. 89-732 (November 2, 1966) as amended.

Based on the current record the applicant meets the criteria for adjustment of status pursuant to the Cuban Adjustment Act and therefore was not attempting to gain a benefit for which he was not entitled. The applicant's and [REDACTED] representations with respect to the bona fides of the marriage were made in an attempt to benefit [REDACTED], not the applicant. Because the representations were not made gain an immigration benefit for the applicant, they were not material with respect to the applicant, and therefore he is not inadmissible under section 212(a)(6)(C)(i) of the Act.

Accordingly, 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.

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ORDER: The appeal is dismissed, the Field Office Director's decision is withdrawn and the waiver application declared moot.