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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 05 2013 Office: BALTIMORE, MARYLAND 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:

[redacted]

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 with the field office or service center that originally decided your case by filing a 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 District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act(the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant's spouse is a Lawful Permanent Resident and he seeks a waiver of inadmissibility in order to reside in the United States with this qualifying relative.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated September 29, 2011.

On appeal, the applicant asserts that his spouse would experience extreme hardship if the applicant is not granted a waiver of inadmissibility.

The record includes, but is not limited to, the applicant's statements, the applicant's spouse's statements, medical reports, financial documents and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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.

To find an individual inadmissible under section 212(a)(6)(C)(i) of the Act the adjudicator must determine that:

1. The alien made a false representation of a material fact
2. The misrepresentation was willfully made, and
3. The fact misrepresented was material.

See Matter of M- , 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-* , 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui* , 15 I&N Dec. 288 (BIA 1975).

The record reflects that the applicant entered the United States with an F-1 student visa on May 5, 1990. The applicant's spouse, [redacted], filed a Form I-130 Petition for Alien Relative on his behalf. U.S. Citizenship and Immigration Services (USCIS) requested further information after it was determined that the applicant's spouse received her lawful permanent resident status based on her marriage to another individual at a time when she may have still been married to the applicant. The applicant's spouse then withdrew the Form I-130 Petition for Alien

Relative on April 27, 2010 without responding to the request for evidence. Evidence in the record submitted by the applicant indicates that he was married to his spouse in 1985, before her second marriage (through which her lawful permanent residence was obtained). No corroborative documentation was presented indicating that any marriage between the applicant and his spouse was terminated before she married another person. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as someone seeking to procure a benefit provided under the Act by willful misrepresentation of a material fact.

The applicant contests inadmissibility based on section 212(a)(6)(C)(i) of the Act, and the AAO finds the record insufficient to support that the applicant engaged in material, willful misrepresentation for the purpose of obtaining a benefit under the Act. Representations made by the applicant's spouse in the process of obtaining her own lawful permanent residence cannot be held against the applicant. Likewise, representations made by the applicant's spouse in the course of filing an I-130 relative petition on behalf of the applicant are not attributed to the applicant without evidence of a willful misrepresentation specifically made by the applicant. The present facts are insufficient to demonstrate that the applicant made a willful misrepresentation in order to obtain immigration benefits as contemplated by section 212(a)(6)(C)(i) of the Act.

The district director called into question whether the applicant's spouse had been divorced from her prior spouse, before marrying the applicant on March 21, 2001. The applicant has presented a death certificate for with his appeal which indicates died on February 28, 1999. This evidence resolves whether the applicant's spouse was no longer married to at the time she and the applicant married on or about March 21, 2001.

The district director indicated that the applicant and his spouse falsely reported that they were single. A marriage certificate from the dated March 21, 2001 identifies the applicant's and his spouse's pre-marriage status as "single", and it does not include information about prior marriages. However, even if the applicant and his spouse erroneously represented that neither had previously been married, such representation to the does not constitute a material misrepresentation for the purpose of obtaining a benefit under the Act, and does not lead to inadmissibility under section 212(a)(6)(C)(i) of the Act.

The district director indicated that the applicant failed to disclose his prior marriage in the context of his Form I-485 application to adjust his status to lawful permanent resident. However, as the prior marriage does not serve as a basis for inadmissibility or ineligibility to adjust status to lawful permanent resident, failure to disclose the true facts was not material, and does not serve as a basis for inadmissibility under section 212(a)(6)(C)(i) of the Act.

There are unresolved questions regarding the circumstances under which the applicant's spouse obtained lawful permanent residence. However, the questions do not suggest that the applicant has committed material misrepresentation that renders him inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the record does not sufficiently support that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and the present application for a waiver is unnecessary. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary