



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

(b)(6)

DATE: JUN 24 2013 Office: ATHENS, GREECE

IN RE:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the application is unnecessary.

The applicant is a native of India and citizen of Yemen 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The acting field office director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 31, 2012.

On appeal, counsel for the applicant seeks review of the application and the evidence submitted to establish eligibility. *Form I-290B*, received February 24, 2012.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with 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 a proper determination that he be excluded.

The record indicates that the applicant has made numerous entries into the United States prior to October 22, 2006. When the applicant attempted to return to the United States on October 22, 2006, he was interviewed by a Customs and Border Protection (CBP) agent who denied his admission based on a finding that the applicant committed misrepresentation when applying for a B visa. Specifically, in the course of an interview the applicant admitted that he erroneously identified his current employer on his visa application. The applicant stated that his employer was Integral Services Co., which was owned by his cousin and was sponsoring him for permanent residence in the United States. At the time, the applicant was in fact operating and working for a business in Kuwait that he owned, contrary to the laws of Kuwait that dictate that foreigners may not own a majority interest in a

company. The applicant stated under oath that his purpose in committing this misrepresentation was to conceal the fact that he owned a business in Kuwait so not to jeopardize his temporary residency in that country.

Based on this information the CBP officer found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for committing a material misrepresentation to obtain a U.S. visa. The applicant was expeditiously removed pursuant to section 235(b)(1) of the Act.

A misrepresentation made in connection with an application for a visa or admission to the United States is material if either the applicant is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that he be excluded. The Adjudicator's Field Manual also provides the following guidance:

N6.3-5. Application of Phrase "In a Proper Refusal if the Truth Had Been Known"

- a. In most cases, in order for a fact to be considered material, the truth of the matter must lead to a proper finding of ineligibility. With the exception of the types of cases discussed in 9 FAM 40.63 N6.2-1, if the facts support a finding that the alien is eligible for a visa, the misrepresented fact is not material.

Upon review, the record does not support that the applicant committed a material misrepresentation. The applicant sought a B visa and entry into the United States for the purpose of engaging in business activities on behalf of his employer. There is no indication that the applicant misrepresented the activities he intended to perform, his anticipated length of stay, or his ties to Kuwait. The record does not reflect that the applicant sought to obtain a B visa or admission in B-1 status for a purpose not permitted under the Act. Whether the applicant was employed by [REDACTED] or his own company was not material to his eligibility for the benefits sought under the Act, irrespective of the consequences the distinction may have had under Kuwaiti law. It is noted that the record supports that the applicant previously entered the United States in B status and nothing suggests that he failed to adhere to the terms of his admissions or depart within the approved periods.

The record does not sufficiently support that the applicant misrepresented a material fact in an attempt to gain a U.S. immigration benefit. Accordingly, the AAO does not find the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Based on these findings the AAO concludes that the applicant is presently not inadmissible to the United States and he does not require a waiver of inadmissibility. Therefore, this appeal will be dismissed as the present Form I-601 application is unnecessary.

ORDER: The appeal is dismissed.