

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **MAY 09 2013** Office: NEWARK, NEW JERSEY

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the Form I-601 application is unnecessary.

The applicant is a native and citizen of Colombia 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 is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his United States citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 2, 2012.

The record contains, but is not limited to, statements from the applicant, as well as financial records, medical information, identity documents and various immigration applications. 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.

The record reflects that the applicant entered the United States without inspection on or about July 30, 1985. The applicant was subsequently apprehended and ordered deported by an immigration judge on September 17, 1985. The applicant was then deported to Colombia on October 9, 1985. On January 18, 1999, the applicant applied for a non-immigrant visa. On Form DS-156, the applicant answered "no", to question # 30 which asks: Have you ever been to the United States? The applicant also answered "no", to question #34 which asks: Have you been deported from the United States in the past five years? Based on these representations, the applicant was found to be inadmissible under section 212(a)(6)(C) of the Act for seeking a benefit under the Act by making willful misrepresentations.

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). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that 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 applicant's response to question #34 on Form DS-156 was in fact correct, as his deportation from the United States occurred more than five years before his application for a non-immigrant visa was filed in 1999. Thus, this response was not a misrepresentation.

The applicant's response to question #30 of Form DS-156 that he had not previously entered the United States was a misrepresentation. However, the fact that the applicant had entered the United States without inspection on or about July 30, 1985 did not give rise to a ground of inadmissibility. The record does not support that the applicant's concealment of his 1985 entry shut of a material line of inquiry that may have led to a proper determination that he was inadmissible or not eligible for a visa. As the applicant's misrepresentation was not material, he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The record does not show that the applicant is inadmissible under another section of the Act. Accordingly, the applicant does not require a waiver of inadmissibility, and the present Form I-601 waiver application is unnecessary. Therefore, the appeal will be dismissed.

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