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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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **DEC 18 2014** Office: TEXAS SERVICE CENTER [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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of India 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 admission to the United States by fraud or willful misrepresentation. The applicant's father is a lawful permanent resident. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Director found that the applicant failed to establish extreme hardship to his father and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Director*, dated May 5, 2014.

On appeal, counsel asserts that the applicant's father would experience extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated May 23, 2014.

The record includes, but is not limited to, counsel's brief, financial records, a psychological evaluation, statements from the applicant's family members, and country-conditions information about India. 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, that:

- (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 that:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (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.

The record reflects the applicant, after being placed in expedited-removal proceedings, was issued a Form I-862, Notice to Appear (Form I-862), in which he was charged with violating section 212(a)(6)(C)(i) of the Act when he arrived in the United States on August 23, 2001. The Form I-862, dated August 30, 2001, includes an allegation that the applicant sought to procure admission

by fraud or by willfully misrepresenting a material fact and specifies only that he "did not present or possess any valid entry documents." In the applicant's January 9, 2003 hearing before an immigration judge, his former counsel conceded that the applicant is removable under section 212(a)(6)(C)(i) of the Act; the transcript, however, indicates that counsel intended to argue the misrepresentation at issue was not material. Although the record reflects that the applicant admitted to this allegation in his immigration proceedings, the applicant's failure to present an entry document does not constitute fraud or willful misrepresentation of a material fact.

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 a 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 Director's decision refers to the applicant's first Form I-601, denied on August 13, 2012. The 2012 denial decision includes a finding under section 212(a)(6)(C)(i) of the Act, based on the applicant having stated on August 23, 2001 that he did not have relatives in the United States, though his parents were in the United States and his father had a Form I-140, Petition for Alien Worker (Form I-140), pending at the time; and inconsistencies between the applicant's statements in his credible-fear interview and his asylum application filed later with the immigration court.

On August 23, 2001, the applicant did not present an entry document when he requested admission into the United States. As such, the applicant was found to be inadmissible under section 212(a)(7)(A)(i)(I) of the Act as an intending immigrant, and he was placed into expedited-removal proceedings under section 235(b) of the Act. The applicant's August 23, 2001 sworn statement reflects that he stated that he did not have any relatives in the United States. The record also reflects, however, that the applicant's parents were in fact in the United States and his father was the beneficiary of a pending Form I-140 when the applicant arrived in August 2001.

The applicant's misrepresentation regarding his family in the United States is not material, because the applicant was found inadmissible as an intending immigrant under section 212(a)(7)(A)(i)(I) of the Act independently, despite his misrepresentation about his family's presence in the United States and his father's pending Form I-140. He would not have been found excludable or inadmissible

under another section of the Act on the true facts, and his misrepresentation did not shut off a line of inquiry that was relevant to his eligibility and could have resulted in his inadmissibility under another section of the Act.

According to the 2012 denial decision, the applicant also is inadmissible for making material misrepresentations related to his asylum claim. Specifically, the applicant stated in his 2001 credible-fear interview that he received threats due to his cousin's political activity in India, whereas in his Form I-589, Application for Asylum and Withholding of Removal (Form I-589), filed in February 2003, he described threats and a physical attack based on his own political activities. The 2001 credible-fear interview worksheet and notes do not indicate that the applicant denied belonging to a political group himself. On August 2, 2004, the applicant withdrew his Form I-589, before he could be questioned about his asylum claim during proceedings.

The evidence does not support finding the applicant misrepresented material facts in his asylum requests. Although his statements describe different reasons that he was threatened by the same political party in India, the claims are not clearly inconsistent, and he could have been eligible for the benefit in both scenarios. Any related misrepresentation would not have shut off a relevant line of inquiry that could have resulted in a determination that the applicant be excluded or removed. As such, the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act for this ground of inadmissibility.

The record also reflects that the applicant was charged with sexual assault in the fourth degree under Connecticut Code § 53(a)-73(a) and disorderly conduct under Connecticut Code § 53(a)-181 on or about April 11, 2003. The applicant was granted accelerated rehabilitation by the court. The pretrial rehabilitation requirements under Connecticut Code § 54-56(e), as it existed at the time of the applicant's charges, did not include having the defendant plead guilty. The record, moreover, does not reflect that the applicant pled guilty to these crimes. The charges were dismissed on July 8, 2005. Therefore, the applicant does not have criminal convictions for immigration purposes.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is dismissed because the applicant is not inadmissible.