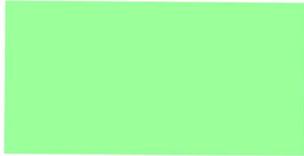
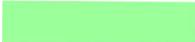


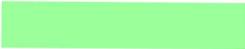
(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **DEC 30 2014** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:

SELF-REPRESENTED

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of Ghana who 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 attempting to procure a visa through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. Citizen fiancée.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, dated May 7, 2014.

On appeal, the applicant's fiancée states that she will suffer medical and financial hardship if the applicant's visa application is not approved, and she submits additional evidence of hardship.

The record includes, but is not limited to, the following documentation: Statements by the applicant and the applicant's spouse, medical documentation for the applicant's spouse, financial documentation, and letters of reference. 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 shows that the applicant applied for an F-1 student visa in May 2010 and again in December 2010, indicating that his date of birth was September [REDACTED] on both visa applications. The applicant's visa was denied as he was unable to provide sufficient evidence that he would be able to support himself financially while studying in the United States. The applicant subsequently applied for a B2 nonimmigrant visa on June 11, 2012, using the same date of birth, September [REDACTED] as on the previous applications. The applicant indicates that the visa application was denied because he was unable to prove the nonimmigrant intent required for a nonimmigrant visa.

The applicant states that his true date of birth is September [REDACTED] and that during the online application process in May 2010, his birthdate was submitted incorrectly as September [REDACTED]. The applicant states that the submission error was not done intentionally or with any malicious motives.

The applicant indicated that his date of birth was September [REDACTED] on his application for a K-1 visa in 2013 as the beneficiary of a Form I-129F, Petition for Alien Fiancé(e). The record includes a

copy of a birth certificate for the applicant showing his date of birth as September [REDACTED] and a declaration from the applicant's mother attesting to the fact that he was born on September [REDACTED].

A misrepresentation is generally material only if by making it the alien received a benefit for which she 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 must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys, supra* at 771-72. The Board of Immigration Appeals (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).

Additionally, "materiality" is defined in the Foreign Affairs Manual, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa.

9 FAM 40.63 N6.1.

The decision finding the applicant inadmissible does not address how the applicant's use of a different date of birth than previously used on his F1 and B2 visa applications shut off a line of inquiry that would have resulted in a proper determination that he be excluded. Even if the applicant intentionally changed his date of birth to conceal that he was previously found ineligible for a student visa because of insufficient funds to support himself or that he failed to establish nonimmigrant intent for a B2 visa, there is no indication that this shut off a line of inquiry related to eligibility for a K-1 fiancé(e) visa, which requires intent to enter the United States solely to marry a U.S. Citizen fiancé(e) within 90 days of admission to the United States. *See* section 101(a)(15)(K)(i) of the Act, 8 U.S.C. § 1182(a)(15)(K)(i). Further, if the September [REDACTED] date of birth used on the previous applications is false and his true date of birth is September [REDACTED] the record does not indicate that the applicant would have been ineligible for a nonimmigrant visa using his true date of birth or establish how using a false date of birth shut off a line of inquiry relevant to his eligibility for a student or visitor visa.

In the present case, the record does not establish that the applicant's use a date of birth in his K-1 visa application differing from that on his F1 and B2 visa applications, whether wilful or not, was material, as there is no indication that it was relevant to his eligibility for the benefit sought.

The record therefore fails to establish that the applicant sought to procure or received a benefit for which he would not otherwise have been eligible based on a material misrepresentation.

The record establishes that the applicant's misrepresentations regarding his date of birth in previous nonimmigrant visa applications were not material. The applicant therefore is not inadmissible under section 212(a)(6)(C)(i) of the Act, and the waiver application is thus unnecessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record does not support the finding that the applicant committed fraud or misrepresented a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. Based on the foregoing, the applicant's misrepresentation was not material within the meaning of section 212(a)(6)(C) of the Act, and he is therefore not inadmissible under section 212(a)(6)(C) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here the applicant is not inadmissible and therefore not required to file a waiver application. Because the waiver application is unnecessary, the appeal is dismissed.

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