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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

DATE: JAN 22 2014 Office: WASHINGTON FIELD OFFICE File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the 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,


R
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, D. C., denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Bolivia 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to adjust his status as the derivative beneficiary of the approved Petition for Alien Worker (Form I-140) submitted on behalf of his wife.

The field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his lawfully resident spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, July 30, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant inadmissible and in finding he had not established extreme hardship to his qualifying relative if he is unable to remain in the United States. In support of the appeal, the applicant submits a brief and new evidence, including: a psychological evaluation, a birth certificate, and current tax returns. The entire record was reviewed and considered in rendering this decision.

The applicant states that he misrepresented his name and nationality to a border patrol officer upon being detained at the U.S.-Mexico border in October 1998 near San Ysidro, California, when he was apprehended after entering the country without inspection. Counsel asserts that the applicant's use of an alias and claim to be a Mexican citizen incurs no inadmissibility under section 212(a)(6)(C)(i) of the Act because he had already entered the U.S. without inspection and was not attempting to remain in the country, and his misrepresentation was thus unrelated to the procurement of a visa or any other benefit under the Act. The applicant claims that after being allowed to walk back voluntarily to Mexico, he reentered the United States without admission or parole several days later in November 1998 and has not left the country since then.

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

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)(1) of the Act provides:

The [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 [...].

Immigration records indicate that U.S. border officials apprehended the applicant on October 20 and October 24, 1998, after he entered the United States without inspection, and voluntarily returned him to Mexico. He states that he claimed to be Mexican when detained. While admitting the misrepresentation, the applicant claims that it was not material and therefore incurs no inadmissibility.

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. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

Here, the applicant misrepresented his nationality not to gain entry to the United States but to be sent back to Mexico rather than Bolivia. At the time of his misrepresentation, border officials had already detained him for illegal entry and determined that he was not eligible to remain in the United States. His misrepresentation did not provide him any immigration benefit because he was removable either as a Mexican or Bolivian citizen, and the false statement did not enable him to gain admission to or remain in the United States any more than if he had disclosed his true citizenship. The record thus does not support a 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 misrepresentations were not material within the meaning of section 212(a)(6)(C), and he is therefore not inadmissible under this provision. Therefore, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is moot and will not be addressed.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed because the applicant is not inadmissible under the Act, and an application for a waiver of inadmissibility is therefore not required.

ORDER: The appeal is dismissed and the application for waiver of inadmissibility is unnecessary.