



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JUL 30 2014

Office: CHICAGO

FILE: [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,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The record reflects that the applicant, a native and citizen of Pakistan, 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 seeking to procure admission to the United States or another benefit under the Act 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 parents.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated August 28, 2013.

On appeal, counsel contests the finding that the applicant is inadmissible for misrepresentation and contends that U.S. Citizenship and Immigration Services erred in finding that the applicant failed to establish that his parents would experience extreme hardship if the waiver application is not approved.

The record includes, but is not limited to, the following documentation: briefs filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion, and Form I-601; statements from the applicant's parents; financial documentation; medical documentation; documentation in support of the applicant's Form I-360, Petition for Special Immigrant, filed on February 7, 2003; 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 Field Office Director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) as he misrepresented his status of being employed as a full-time religious worker and his employment history in an attempt to gain adjustment of status through filing the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on February 21, 2004.

A misrepresentation is generally material only if by making 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 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* 495 U.S. 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).

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

The record indicates that on February 7, 2003, the [REDACTED] filed Form I-360, Petition for Amerasian, Widow, or Special Immigrant (Form I-360) on behalf of the applicant as a special immigrant religious worker. The application contained copies of the petitioner's qualifications and the beneficiary's qualifications, including a copy of the applicant's theology degree, and a statement regarding the applicant's qualifying ministry experience. The Form I-130 was approved on September 18, 2003. On February 21, 2004, the applicant filed Form I-485 to adjust status based on the approved Form I-360. On September 1, 2005, USCIS issued a Notice of Intent to Deny (NOID) the applicant's Form I-485 on the basis that the applicant continued in or accepted unauthorized employment, or that he failed to maintain continuously lawful status since his last entry into the United States. On September 27, 2005, the applicant submitted a letter stating that he wished to withdraw his I-485 application in response to the USCIS NOID.

In the denial decision, the field office director states:

The record shows that you applied to adjust status on February 19, 2004 . . . as a Special Immigrant religious Worker. In order to qualify for this status, you must have been employed solely as a religious worker. Based on your testimony on April 30, 2013 and the employment records you have given USCIS, this was not the case. The fact that you withdrew this I-485 before adjudication does not affect the fact that you attempted to gain adjustment of status by misrepresenting your status and employment history. *Decision of the Field Office Director*, dated August 28, 2013.

The record indicates that the applicant applied for adjustment of status based on an approved Form I-360 petition and that with this application he submitted a Form G-325, *Biographic Information*, in which he listed employment as a leasing agent at [REDACTED] from July 2001 to June 2002 in addition to his work as Christian Minister during the period preceding the filing of the Form

I-360 Petition. The applicant withdrew his Form I-485 after being issued a Notice of Intent to Deny based on having accepted unauthorized employment and having failed to maintain continuously lawful status since his last entry into the United States. There was no determination that he was not eligible for classification as a special immigrant religious worker due to having accepted non-religious employment. Furthermore, even if this additional employment would have rendered the applicant ineligible for adjustment of status, the record clearly indicates that the applicant disclosed that he had been employed as a leasing agent from 2001 to 2002.

The decision of the director does not specify what employment the applicant disclosed during his interview on April 30, 2013 or which employment records led to the conclusion that he had other, non-religious employment and was not employed “solely as a religious worker.” However, even if the applicant had other employment during the time period in question, failure to list it on his Form G-325 would in itself not render him inadmissible, as he did list his employment as a leasing agent.

The record does not establish that the applicant made a willful, material misrepresentation during the process of applying for adjustment of status pursuant to the approved Form I-360. Moreover, there is no evidence of record that the applicant committed fraud. The BIA has held that the term “fraud” in the Act “is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the present case, the record does not support a finding that the applicant sought to obtain adjustment of status by wilfully concealing the fact that he had engaged in non-religious employment during the two years preceding the filing of the I-360 Petition. Based on the record, we find that in seeking adjustment of status in 2004 the applicant did not commit fraud or misrepresent a material fact and therefore is not inadmissible under section 212(a)(6)(C) of the Act.

The Field Office Director also determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for providing false testimony during an April 30, 2013 interview with USCIS.

The record indicates that the applicant was employed at a real estate company which was being investigated by the FBI. According to the decision of the Field Office Director denying the applicant’s Form I-601, the applicant was interviewed by the FBI on December 7, 2007, and told the FBI that he was aware of funds relating to real estate transactions that were not being disclosed on an HUD-1 form, as required, and that he informed one investor of the need to falsely claim property as his primary residence and for a CPA to create letters falsely claiming that the investor and other investors were self-employed. The Field Office Director states that during the applicant’s interview on April 30, 2013, the applicant testified that he had not been involved with the loans and was not aware of false statements being made or real estate regulations being broken, constituting a misrepresentation. *See Decision of the Field Office Director*, dated August 28, 2013.

Counsel admits that the FBI thoroughly investigated the real estate company where the applicant was employed, and that FBI agents questioned the applicant for many hours in 2007. However, counsel notes that the applicant was never charged with any crimes, either at the federal or the state level.

Counsel contends that the statements the applicant made during the April 30, 2013 interview regarding his employment with the real estate company are not relevant, as the federal authorities did not charge the applicant with any crimes.

In *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), the Board of Immigration Appeals (BIA) held that a “valid admission of a crime for immigration purposes requires that the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms,” a rule intended to insure “that the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude.” *Id.* at 597. In the present case, the record is not clear in regard to exactly what was asked of the applicant and how he responded in connection to his employment with the real estate company, as there is no sworn statement of the applicant resulting from his April 30, 2013 interview. Furthermore, the applicant has not, as of the date of this decision, been charged with any crime in connection with his employment at the real estate company. As noted above, 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 the alien is excludable on the true facts or 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-*, *supra*. Even if his testimony at his April 30, 2013 interview was inconsistent with his statement to the FBI in 2007, the record does not establish that such misrepresentation, even if willful, would be material. As there is no indication that the applicant was charged with or convicted of a crime involving moral turpitude, the record does not establish that the applicant, in contradicting his prior statement to the FBI, shut off a line of inquiry which is relevant to his eligibility and which might well have resulted in proper determination that he be excluded. The applicant therefore is not inadmissible under section 212(a)(6)(C)(i) of the Act, and the waiver application is thus unnecessary.

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.