



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAR 24 2014**

Office: LOUISVILLE FIELD OFFICE

IN RE:

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:

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Louisville, Kentucky, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary.

The applicant is a native and citizen of India 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 admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. Citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 28, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the USCIS erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief. The record contains previous statements from the applicant and her spouse, medical documentation for the spouse's grandmother, and documentation in support of the applicant's Application to Adjust Status (Form I-485).

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.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 field office director found that at the applicant's interview for her Application to Adjust Status (Form I-485), she stated under oath that she had obtained a false stamp in her Indian passport to show a December 15, 1989 entry to India in an effort to show that she had timely departed and had

not overstayed her admission as a B-2 visitor. In denying the Form I-485, the field office director had determined that on a previous I-485 application, submitted on January 21, 2009, the applicant checked "no" to question 10, indicating that she had never sought by fraud or willful misrepresentation of a material fact to procure an immigration benefit. The field office director determined that by indicating "no" the applicant failed to disclose her procurement of a false stamp and cut off material line of inquiry which was relevant to her eligibility. In a sworn statement given at her interview the applicant explained that the stamp was obtained by her father-in-law, who had taken her passport to India to be renewed, and at that time obtained the false entry stamp. The applicant stated that the entry made it appear she had returned to India before her visa expired. The field office director therefore found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

The record reflects that applicant entered the United States with a B-2 visitor visa on November 30, 1989. The applicant contends that she has not departed since that time and nothing in the record shows she subsequently departed and returned.<sup>1</sup> The applicant submitted the copies of her passport in response to a USCIS request for evidence in support of a previously-filed I-485 to establish her continued lawful status in the United States following her arrival. The denial of the Form I-485 submitted on January 12, 2009 states that the applicant failed to submit conclusive evidence that she maintained lawful status from her entry until filing an earlier application to adjust status.

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); and *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 record indicates that the applicant has submitted a Form I-485 Application to Adjust Status on four occasions and on each application has consistently indicated that her last arrival in the United States was November 30, 1989. On each application she indicated she had entered with a B-2 visa

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<sup>1</sup> The denial of the applicant's 2009 application to adjust status states that she submitted copies of her passport that indicate a legal entry on November 30, 1999, but this appears to be an erroneous reading of the date on the admission stamp. Several copies of the passport are on the record, some of which are of poor quality, and the admission date is difficult to discern on those copies. However, a review of clearer copies of the passport shows only one U.S. admission stamp, on page 30, with a date of November 30, 1989.

on November 30, 1989 and stated she was applying for adjustment of status under section 245(i) of the Act, which does not require that she be in lawful status.

The AAO notes that the applicant's former counsel submitted three Form I-485 applications from 2007 to 2009 for the applicant, and though he indicated on the forms she was applying under section 245(i) of the Act, he did not submit a copy of the petition that "grandfathered" the applicant and made her eligible to adjust her status under section 245(i).<sup>2</sup> The Texas Service Center sent the applicant Requests for Evidence for each of her adjustment applications indicating there was no evidence she qualified for adjustment of status under section 245(i) and requesting evidence that she had maintained lawful status since her admission. In response to these requests for evidence, former counsel failed to submit evidence that she was grandfathered as the derivative beneficiary of her brother-in-law's I-130 petition and instead submitted the copies of her passport, which included her true admission stamp and the fraudulent Indian entry stamp. At no point did the applicant or her attorney claim that she had in fact departed the United States as the stamp indicated. Rather, as noted above, the applicant consistently stated that she had entered in B-2 status in 1989, had not departed, and was applying for adjustment of status under section 245(i), as she had failed to maintain lawful status.

Although the applicant admitted that the entry stamp to India was fraudulent and obtained without her departing the United States, the record does not support a finding that the applicant used that stamp in an effort to obtain an immigration benefit. The applicant never actually sought to enter the United States with the passport containing the fraudulent stamp, as she never departed the United States after entering in November 1989.<sup>3</sup> She submitted copies of her passport upon a request for documentation in conjunction with an attempt to adjust status, but at no point did she claim that the stamp was genuine and she had departed or that she was in lawful status. Further, a claim she had departed the United States in December 1989 as the stamp indicated would not be a material misrepresentation, as the applicant was eligible for adjustment of status under section 245(i) of the Act, regardless of whether she had overstayed her period of authorized stay.

Although the applicant submitted a copy of her entire passport as requested, she did not present the fraudulent stamp to immigration authorities as evidence that she had departed the United States in 1989, but rather was consistently truthful about her admission and unlawful status in the United States since 1989. Further, as the content of the fraudulent stamp would not affect her eligibility for adjustment of status under section 245(i) of the Act, any misrepresentation was not material, as she was eligible for adjustment of status based on the true facts. The possession of the fraudulent stamp, without presenting it to immigration authorities to procure admission or an immigration benefit, does not render her inadmissible under section 212(a)(6)(C)(i) of the Act.

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<sup>2</sup> The applicant was the derivative beneficiary of an I-130 Petition for Alien Relative filed on behalf of her husband by his brother on January 14, 1998.

<sup>3</sup> The AAO notes that had the applicant departed the United States and subsequently sought B-2 admission using the fraudulent stamp to conceal an overstay, this would be a material misrepresentation, as the violation of the terms of her B-2 admission would render her ineligible for readmission as a B-2 visitor.

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*NON-PRECEDENT DECISION*

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The AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is unnecessary and will not be addressed.

**ORDER:** The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.