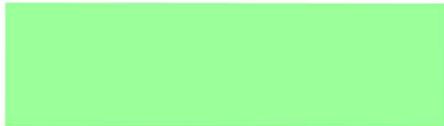




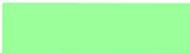
**U.S. Citizenship  
and Immigration  
Services**

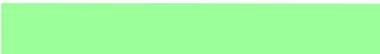
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Date: **OCT 27 2014**

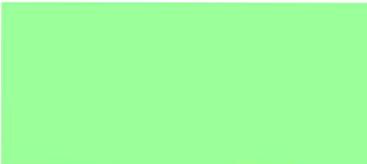
Office: KANSAS CITY

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:



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 waiver application was denied by the Field Office Director, Kansas City, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the prior decision of the field office director will be withdrawn and the application declared necessary.

The applicant is a native and citizen of Senegal 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 having attempted to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 4, 2014.

On appeal, counsel asserts that the applicant did not have the intent to deceive the U.S. Citizenship and Immigration Services (USCIS) and there was no immigration benefit to be obtained through such alleged deception. Thus, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. In support, counsel submits a brief. 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.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

The record establishes that in December 2011, the applicant married his current spouse, a U.S. citizen. Subsequently, in December 2011, his spouse filed a Form I-130, Petition for Alien Relative (Form I-130) on behalf of the applicant, and concurrently, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The record indicates that the applicant listed two prior marriages on the Form I-130, but did not list a third marriage on the Form I-130 or on any documentation pertaining to the applicant's adjustment of status application, or during the applicant's adjustment of status interview in April 2012.<sup>1</sup> Based on the

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<sup>1</sup> The record includes a copy of a judgment confirming that the applicant married his third spouse on March [REDACTED] in South Carolina, and they were divorced on November [REDACTED]. See *Judgment, Circuit Court of [REDACTED] County*,

applicant's failure to disclose one of his three previous marriages, it was determined that the applicant was inadmissible 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 having attempted to procure an immigrant benefit by willful misrepresentation.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

We conclude that if the applicant had disclosed his previous marriage and subsequent divorce, he would still have been eligible for the benefit sought as he had been divorced before marrying his current spouse. By omitting this fact he did not receive a benefit for which he was not eligible. Further, his failure to disclose the prior marriage did not shut off a line of inquiry which was relevant to his eligibility, as the applicant never sought an immigration benefit based on this previous marriage and the marriage was not relevant to determining whether his current marriage was entered into in good faith.

We find that the applicant's failure to disclose one of his previous marriages was not a material misrepresentation. As referenced above, the fact that the applicant had previously been married and subsequently divorced would not have resulted in his being denied any benefits. Thus, we find 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 will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field

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*NON-PRECEDENT DECISION*

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office director is withdrawn and the application for a waiver of grounds of inadmissibility is declared unnecessary.

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