U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 1 0 2015

FILE:
APPLICATION RECEIPT:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York District, denied the waiver application. 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 The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary.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 China 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 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 his U.S. citizen spouse.

The district director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the District Director* dated March 18, 2014.

On appeal, filed on April 10, 2014, and received by the AAO on January 5, 2015, the applicant contends that he had no intention or reason to misrepresent any detail on documents used to enter the United States, and that if he is removed from the United States his spouse will suffer extreme hardship. In support of the appeal the record contains a brief, statements from the applicant and his spouse, and a psychological evaluation of his spouse. 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 district director determined that the applicant entered the United States on March 21, 1996, as a B-1 visitor with a passport and visa containing a date of birth other than his own and that when entering the United States the applicant notated the same incorrect date of birth on a Form I-94 Arrival-Departure Record. Based on this information the district director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal the applicant asserts that at the time of his entry to the United States he was traveling on an employer-sponsored trip and that his employer had hired a travel agency to facilitate details. The applicant asserts that he had presented authentic documents to the travel agency, but that he did not receive his passport, visa, and boarding pass until shortly before traveling and then noticed an error with his date of birth. He states that he informed the team leader who told him to board the flight because nothing could be done about a clerical error at that time, and that his employer had already spent money and time on the trip. The applicant asserts that all other information was correct. On Form I-601, filed June 25, 2012, the applicant also had stated that he got his passport and visa from an agency before departure for the United States and noticed the error, but it was too late to be corrected because he would need to have his passport reissued and then obtain a visa, which would take several months. The applicant states that when he entered the United States he filled out Form I-94 in accordance with the information on his passport and B-1 visa.

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. 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 Board of Immigration Appeals 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).

We find that the applicant's use of an incorrect date of birth was not material. There is no indication that he would have been ineligible for a B-1 visa under his correct date of birth or that the use of the incorrect date of birth, even if willful, shut off a line of inquiry relevant to his eligibility for the visa. Further, had the applicant's passport, visa and Form I-94 contained the correct date of birth, the applicant would have been eligible for admission as a B-1 visitor based on the true facts. By

notating an incorrect date of birth on his Form I-94, the applicant did not attempt to receive a benefit for which he was not otherwise eligible and did not shut off a line of inquiry relevant to his eligibility. Nothing in the record indicates that using his correct date of birth of , rather than the incorrect date of birth of , would have affected his eligibility for the B-1 visa or admission to the United States.

Thus, we find that the district 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.