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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: **MAY 05 2015**

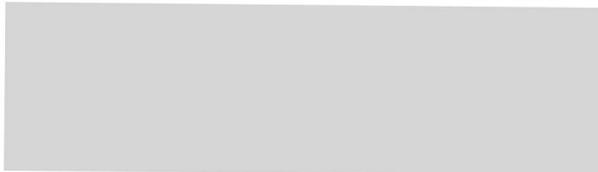
Office: COLUMBUS

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, Columbus, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The record reflects the applicant is a native and citizen of the People's Republic of China, who was found to be inadmissible to the United States pursuant to 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 sought to procure a benefit under the Act through willful misrepresentation. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that his U.S. citizen spouse filed on his behalf. 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 family.

The Field Office Director determined the applicant had not established extreme hardship to a qualifying relative, his U.S. citizen spouse, if he were not allowed to remain in the United States; he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of Field Office Director*, dated September 5, 2014.

On appeal, the applicant, through counsel, asserts U.S. Citizenship and Immigration Services (USCIS) erred by failing to consider all of the evidence and relevant hardship factors. *Form I-290B, Notice of Appeal or Motion*, filed October 3, 2014.

The record includes, but is not limited to: a brief, an affidavit from the qualifying spouse, statements by the applicant's mother-in-law and friends, documents concerning identity and relationships, medical records, a psychological evaluation, financial documents, and reports on conditions in China. 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, that:

- (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:

The Attorney General [now the Secretary of Homeland Security (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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of

section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reveals the applicant arrived at the United States on September 4, 1993, and was placed into exclusion proceedings. An immigration judge denied his asylum application and ordered the applicant excluded. On February 17, 1994, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal.

According to the record, the applicant's daughter was born in New York in 2002,¹ while her mother, the applicant's current U.S. citizen spouse, was still married to another man. The applicant's name does not appear on their daughter's initial birth certificate.

The record also reflects that the applicant's spouse became a U.S. citizen approximately seven months before she divorced her ex-husband in 2008. Slightly over a month after her divorce, she married the applicant. The record includes a Notification of Order of Filiation from the New York County Family Court, dated [REDACTED] 2009, indicating that the applicant is their daughter's father and that her birth certificate was to be amended to reflect that fact. In both of his Forms I-485, Applications to Register Permanent Residence or Adjust Status, the applicant lists their daughter as one of his children.

The applicant submitted a motion to reopen his asylum application in 2009, claiming he would be persecuted in China for violating family-planning policies, because he has two children. He appealed the immigration judge's decision dismissing the motion to the BIA, which dismissed his appeal on May 18, 2012.

In his decision denying the applicant's Form I-601, the Field Office Director found the applicant inadmissible for making a material misrepresentation, because the applicant verbally denied he was the biological father of his U.S. citizen daughter at his adjustment interview in 2012. In his decision the Field Office Director concluded that "more likely than not," the applicant is his daughter's biological father. The Field Office Director further found that the applicant had misrepresented a material fact by claiming he met his U.S. citizen wife in the fall of 2004. The Field Office Director states the applicant was trying to conceal their relationship because being honest about it may have affected his spouse's ability to naturalize and, ultimately, the applicant's ability to adjust to lawful permanent 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*

¹ The applicant and his wife claim their daughter was born in 2000, but according to her birth certificate, she was born in 2002.

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 a 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).

Additionally, "materiality" is defined in 9 FAM 40.63 N6.1, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The [Secretary] has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be as follows: "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either: (1) The alien is inadmissible 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 or she be inadmissible." (*Matter of S- and B-C*, 9 I&N 436, at 447.)

The applicant's misrepresentation related to whether he is his U.S. citizen daughter's biological father is not material, because he would not have been inadmissible, removable or ineligible on the true facts. Moreover, his misrepresentation did not cut off a line of inquiry, which would have been relevant to his eligibility and which might well have resulted in a proper determination that he was inadmissible. Similarly, his misrepresentation about when he met his U.S. citizen wife is not material, because the year they met is not relevant to his eligibility. The Field Office Director has not shown, and the record does not reflect, how the applicant would have been inadmissible on the true facts or how either misrepresentation, made after his spouse had naturalized, shut off a line of inquiry relevant to the applicant's eligibility to adjust status in 2012.

The Field Office Director's determination that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act is withdrawn. Therefore, the waiver application is unnecessary, and it is not necessary to address whether the applicant established extreme hardship to his qualifying spouse pursuant to section 212(i) of the Act.



In the present case, the record does not establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

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