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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: APR 28 2004

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The OIC's decision will be withdrawn and the matter remanded to her for further consideration and action.

The record reflects that the applicant is a native and citizen of India. He 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 an immigrant visa by knowingly and willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his Lawful Permanent Resident (LPR) father. He now seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States to reside with his parents

The OIC concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated April 17, 2002.

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.

To recapitulate, the record reflects that on January 15, 2001, during his application for an immigrant visa the applicant presented a fraudulent school certificate misrepresenting the fact that he had graduated from school. A field investigation conducted by the Consular officer in Dhaka, Bangladesh, determined that the documentation submitted by the applicant was totally counterfeit containing both fraudulent signatures and seals. Therefore the Consular Officer found the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, the applicant submits an affidavit from his father stating general hardship that would be imposed on the applicant's parents if he were not permitted to travel to the United States at this time. In the affidavit it is stated that the applicant was mislead by an interpreter to believe that he had to be a high school graduate in order to obtain an immigrant visa. Because the applicant had not graduated from high school he produced a fraudulent certificate and presented this document to the consular officer.

The principal elements of the ground of inadmissibility contained in section 212(a)(6)(C)(i) of the Act, are (1) fraud or (2) willfulness and (3) materiality. Fraud or a willful misrepresentation may be committed by the presentation of either an oral or written statement to a United States Government official. However, a "harmless" misrepresentation that does not affect admissibility is not "material." *Matter of Martinez- Lopez,* 10 I&N Dec. 409, 414 (BIA 1962; A.G. 1964) (finding no materiality in the alien's misrepresentation of a job offer where he was not likely to become a public charge); *Matter of Mazar,* 10 I&N Dec. 80, 86 (BIA 1962) (finding no materiality in nondisclosure of involuntary communist party membership that would not have resulted in a determination of excludability).

Before the AAO can make a decision on the appeal, the grounds of inadmissibility must be established. It is not clear from the record of proceedings if, in fact, the applicant is inadmissible under 212(a)(6)(C) of the Act. The OIC decision does not make clear why the presentation of the school certificate was a "material"

fact, if an immigrant visa would had been issued to the applicant without presentation of the school certificate and if this document affected the applicant's admissibility to the United States.

In view of the foregoing, the previous decision of the OIC will be withdrawn. The application is remanded for reconsideration of the issues stated above and entry of a new decision, which, if adverse to the applicant, will be certified to the AAO for review accompanied by a properly prepared record of proceedings. [1]

ORDER: The officer in charge's decision is withdrawn. The matter is remanded to her for further action consisted with the foregoing discussion.

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[1] The office in New Delhi, India notes that the file jacket in this record of proceedings displays an alien registration number, A70-274-313, which is not correct and that the correct number for the applicant should be A70-272-313. A review of the Central Index System, CIS, reveals that A70-272-313 has been assigned to another individual and not to the applicant in this case. The CIS further reveals that A70-274-313, the number on the filed jacket, has not been assigned to any individual as of this date. The office in New Delhi needs to clarify this issue as well.