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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NY

Date: NOV 21 2007

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:

[Redacted]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not 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), thus the relevant waiver application is moot.

The applicant, [REDACTED] 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated October 26, 2004.

On appeal counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act, but only under section 212(a)(6)(A) of the Act for entry without inspection.¹

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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.

The applicant stated that he was smuggled into the United States by plane. *Record of Sworn Statement*, page 5. The applicant stated that when he “came into the United States” he had “someone else’s documents,” which were taken by the “sneaker” when he came into the country. *Id.* The applicant stated that he “came in Los Angeles first” and then he took an airplane from there to New York. *Id.*

To clarify the Record of Sworn Statement, the applicant submitted an affidavit, dated August 18, 2004, into the record. In the affidavit, the applicant stated that he followed a “snakehead to go to Hong Kong first,” where he stayed a week. He stated that he arrived in Mexico and in early May 2000 the snakehead arranged for a truck to drive him and five other people to some place, “probably within New Mexico or Arizona.” He stated that he and the others were sometimes told to get down from the truck and walk. He stated that he and another person “were sent to an airport and took [a] flight to Los Angeles [sic].” He stated that after he arrived in Los Angeles, the snakehead’s colleague took away his passport and all the papers in his pockets, including the stubs of the airline tickets. He stated that he used the passport and visa, which contained his picture but used a name not his own, to leave from China and enter Mexico, and that he “entered the United States without inspection by US custom [sic].”

In the supplemental affidavit, dated November 22, 2004, the applicant provides further clarification of his method of entry into the United States.

¹ Inadmissibility under section 212(a)(6)(A) of the Act is not waived through submission of Form I-106, therefore, the AAO will not discuss that ground of inadmissibility in this decision.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with 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 a proper determination that he be excluded.

Based on the evidence in the record, The AAO finds that the director erred in finding the applicant inadmissible under section 212(a)(6)(C) of the Act. Although the record demonstrates that the applicant had a fraudulent passport and visa, it fails to establish that the applicant presented those documents to a U.S. border patrol agent or immigration officer in order to gain entry into the United States. Thus, the applicant did not willfully misrepresent a material fact so as to procure either admission into the United States or a benefit provided under the Act.

Based on the record, the AAO finds that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

ORDER: The October 26, 2004 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.