U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 03 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the People's Republic of China. The AAO notes that it is unclear of the exact date that the applicant initially entered the United States; however, he entered the United States sometime between December 15, 1998 and February 15, 1999. Based on the applicant's Request for Asylum (Form I-589), the applicant initially entered the United States on December 15, 1998, by presenting a lawful permanent resident card (Form I-551) in someone else's name.[1] Based on statements made by applicant's counsel, the applicant initially entered the United States on February 15, 1999. On July 6, 1999, the applicant filed a Form I-589. The applicant's Form I-589 was referred to an immigration judge, and on August 10, 1999, a Notice to Appear (NTA) was issued against the applicant. On May 8, 2000, an immigration judge ordered the applicant removed to the People's Republic of China. On May 16, 2000, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On April 20, 2001, the applicant's wife, a naturalized United States citizen, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 7, 2001, the Board returned the applicant's case to the immigration court after the applicant requested that his appeal be withdrawn. On February 7, 2003, the applicant's wife filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 13, 2003, a Warrant of Removal/Deportation (Form I-205) was issued. On August 29, 2003, the applicant was removed from the United States. **On January 23, 2004, the applicant's Form I-130 was approved.** The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his United States citizen wife, lawful permanent resident sons, and United States citizen stepsons.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud. *Director's Decision*, dated March 8, 2007. The Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-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.

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[1] On May 8, 2000, the applicant testified under oath that he entered the United States by presenting a fraudulent green card that was provided by a snakehead.

. . . .

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

Section 212 of the Act provides, in pertinent part, that:

(i) (1) 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 immigrant 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...

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered

removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, asserts that the applicant is not inadmissible for fraud, because the immigration judge "probably did not made [sic] a decision on the materiality of the fake green card because the IJ denied [the applicant's] asylum on the one year issue." *Appeal Brief*, page 6, filed April 9, 2007. The AAO notes that the applicant admitted under oath to the asylum officer and immigration judge, that he used a Form I-551 in someone else's name to enter the United States. Counsel states that "it should be noted applicant had not practiced fraud on a U.S. government official. The charge of inadmissibility against him probably would not be sustained because he told the truthful [sic] about using a fake green card." *Id.* citing *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

The Department of State Foreign Affairs Manual offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. For a misrepresentation to fall with the purview of INA § 212(a)(6)(C)(i), it must have been practiced on an official of the United States government, generally speaking, a consular officer or an immigration officer. *See* 9 FAM 40.63 N4.3.

In *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), the Board of Immigration Appeals (Board) stated:

> It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found.

In *Matter of Cervantes*, 22 I&N Dec. 560, 562 (BIA 1999), the respondent was found to be inadmissible when he purchased a counterfeit Texas birth certificate, with the intent to obtain a United States passport, which he then used to travel into and out of the United States and to obtain employment. The Board found that "[b]y fraud and by willful misrepresentation of a material fact, [the respondent] sought to procure both 'documentation' and 'other benefits' under the Act." *Id.* at 563. The "other benefits" included travel in and out of the United States on the passport, a clear benefit under the Act.

The record reflects that the applicant admitted under oath that he submitted a fake green card to enter the United States; therefore, he knowingly misrepresented himself to a United States government official in order to enter the United States. The AAO finds that the applicant entered the United States by fraud and is inadmissible under section 212(a)(6)(C)(i) of the Act.

Since the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and he intends to apply for an immigrant visa, he must file a Waiver of Grounds of Excludability (Form I-601) at the consular office considering the visa application. *See* 8 C.F.R. § 212.7(a)(1). Additionally, since the applicant is currently residing abroad, he is required to file the Form I-601 and the Form I-212 simultaneously with the American consul having jurisdiction over the alien's place of residence.

8 C.F.R. § 212.2(d) states, in pertinent part:

> (d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Wavier of Grounds of Excludability, *must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien's place of residence.* The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

Emphasis added.

The AAO finds that since there is no evidence that the applicant filed his Form I-212 and a Form I-601 simultaneously with the American consul having jurisdiction over his place of residence, that the applicant's Form I-212 was not properly filed. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.