U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: GUANGZHOU, CHINA Date:

IN RE: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Officer in Charge will be withdrawn and the matter remanded to the Officer in Charge for further action consistent with this decision.

The applicant is a native and citizen of China who was found 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, upon receiving no further evidence from the applicant, determined that the application was abandoned and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated January 29, 2002.

The AAO notes that the decision of the officer in charge (OIC) indicates that the applicant was provided 90 days to submit additional evidence of hardship after an initial determination, on November 21, 2000, by the OIC that hardship was not established in the waiver application. *Decision of the Officer in Charge*. The OIC states that the applicant failed to respond to the request within the time limit allowed and therefore the application was considered abandoned and denied. *Id.* The AAO notes that the request for evidence was sent by the OIC to the applicant's spouse in the United States and was returned as not deliverable. The record fails to establish that an evidence request was sent to the applicant in China or that the request was successfully delivered to any party. The AAO finds, therefore, that it cannot be fairly concluded that the applicant abandoned his waiver application.

On appeal, the applicant asserts that he made no false statements or misrepresentations to any United States official at any time or at any place to support or help his spouse to enter the United States legally or illegally. *Appeal by Wu Bei Ming*.

The record fails to reflect the basis for the finding of the consular officer that the applicant procured or attempted to procure admission to the United States by fraud or willful misrepresentation. The AAO notes that a determination of extreme hardship is unnecessary unless the OIC establishes grounds of inadmissibility for which the applicant requires an approved Form I-601 waiver application.

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:

> (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 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.

On remand, the OIC shall reopen the application in order to prepare a Notice of Intent to Deny containing an explanation of the charge of inadmissibility and the nature of evidence regarding hardship to be submitted for consideration. The applicant shall be given an opportunity to respond to the Notice of Intent to Deny and the OIC will render a new decision on the Form I-601 application based on the record as it stands at that point. If the application is still denied, the applicant will be allowed to file a new appeal, without requirement of an additional fee. The AAO notes that any appeal by the applicant must be filed on Form I-290B as mandated by 8 C.F.R. § 103.3(a)(2).

The record contains an INS Fee Authorization reflecting that the applicant was charged $195 for the Appeal for Waiver. The record also contains a receipt reflecting the same amount. The AAO notes that the authorized fee for the instant appeal is $110. The applicant shall be refunded any amount that he paid in excess of the $110 fee.

The decision of the OIC will be withdrawn. The application will be remanded to the OIC to for further action consistent with the present decision.

Because the decision of the OIC failed to clarify the specific reasons for his denial of the applicant's claim, the AAO finds it necessary to remand the present matter to the OIC for a new decision explaining the charge of inadmissibility. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The decision of the OIC is withdrawn. The application is remanded to the OIC for further action consistent with the present decision.