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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H2

FILE:

[REDACTED]

Office: NEW YORK, NY

Date: **AUG 12 2009**

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.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, U.S. Citizenship and Immigration Services (USCIS), New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the Director's decision and remand the matter for issuance of a new decision.

The applicant 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Director*, dated September 4, 2008.

On appeal, counsel contends that USCIS erred in finding the applicant inadmissible and in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion; Attorney's brief*, dated October 4, 2008.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, medical records and prescriptions for the applicant's spouse; medical records for the applicant's child; published medical and country conditions reports; a statement from the applicant's spouse; a psychological evaluation; employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; Form W-2s for the applicant's spouse; bank statements; a telephone bill; a Chinese household register; a Chinese registration of permanent residents; a statement from the applicant's uncle; and statements from the applicant. The entire record was reviewed and considered in rendering this decision.

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 that:

- (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.

The record reflects that on March 16, 2000 the applicant attempted to gain admission to the United States at the airport in Chicago, Illinois. *Record of Sworn Statement*, dated March 16, 2000. The applicant was intercepted by immigration officials as he attempted to enter a restroom near the Federal Inspection area. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated March 16, 2000. The applicant was placed into secondary inspection where it was determined that he did not have travel documents in his possession. *Id.* **The applicant expressed a fear of returning to China and received a credible fear interview.** *Record of Determination/Credible Fear Worksheet*, dated March 27, 2000. The applicant was found to have a credible fear of persecution. *Credible Fear Findings*, dated March 30, 2000. The applicant filed for asylum and withholding of removal. *Form I-589*, dated November 24, 2000. In the Notice to Appear, the applicant was charged with being inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact and under section 212(a)(7)(A)(i)(I) of the Act for not possessing valid documents to gain admission to the United States. *Notice to Appear*, dated March 30, 2000. During an immigration court hearing, the applicant conceded the section 212(a)(7)(A)(i)(I) charge and denied the section 212(a)(6)(C)(i) charge. *Transcript from the Immigration Court*, dated February 8, 2001. The immigration judge denied the applicant's case for asylum and withholding of removal, making an adverse credibility finding while ordering the applicant to be removed from the United States under section 212(a)(7)(A)(i)(I) only. *Decision of the Immigration Judge, Executive Office for Immigration Review, Immigration Court, New York, New York*, dated August 20, 2004. The Board of Immigration Appeals and the United States Court of Appeals for the Second Circuit affirmed the decision of the Immigration Judge. *Decision of the Board of Immigration Appeals, Executive Office for Immigration Review*, dated October 18, 2006; *Summary Order, United States Court of Appeals for the Second Circuit*, dated August 31, 2007.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act based on the applicant's admission to having committed asylum fraud at the time of his adjustment of status interview. *Decision of the Director*, dated September 4, 2008. The AAO observes that the record does not include interview notes, a sworn statement, or any other type of documentation of this admission. The AAO cannot, therefore, conclude that the record establishes that the applicant is subject to section 212(a)(6)(C)(i) of the Act. As such, the AAO withdraws the Director's decision and remands the matter for issuance of a new decision that is supported by the record as it is currently constituted or as supplemented by the Director. The new decision, if adverse to the applicant, must be certified to the AAO for review.

ORDER: The decision is withdrawn and the case is remanded to the Director, USCIS, New York, New York for the issuance of a new decision.