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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: ATLANTA, GA Date: JUN 18 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The record reflects that the applicant is a native and citizen of China. The district director found the applicant 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 attempted to enter the United States by fraud or willful misrepresentation. The applicant is married to a Chinese national and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The district director found that the applicant did not have a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated September 25, 2006.

On appeal, relying on a decision by an immigration judge, counsel contends that the applicant did not violate section 212(a)(6)(C)(i) of the Act and, therefore, does not need to file a waiver application at all. *See Oral Decision of the Immigration Judge*, dated September 22, 1994, at 2 ("the Government has not met their burden, with respect to 212(a)(6)(C) charge, therefore, I'm dismissing that charge.").

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

After a careful review of the record, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The record indicates that the applicant arrived in the United States on May 25, 1993, and applied for admission for temporary business. Documentation in the record shows that the applicant was traveling with ten other individuals from China purportedly to attend a two-week program at The American University in Washington, D.C. Immigration officials determined that the program had been canceled and that the participants were part of an organized smuggling ring. In her sworn statement, the applicant stated she was born on October 10, 1965, and that she was the Manager of the credit department for a financial company in Huinan province. *Record of Sworn Statement in Affidavit Form by* [redacted], dated May 25, 1993. A list of purported attendees in the record lists the applicant's occupation as "Director." According to her asylum application, the applicant was born on August 15, 1972 and was living in Fujian province. *Request for Asylum in the United States*, signed by the applicant September 2, 1993. In addition, the applicant indicated that she was "[n]ot employed" from August 1988 until the present. *Biographic Information (Form G-325A),* signed by the applicant September 2, 1993. One of the application contained incorrect

information. Based on the applicant's conflicting statements, which have not been reconciled, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO notes that though the immigration judge found that the Government did not meet their burden with respect to the fraud charge, the burden of proof in removal proceedings lies with the Government. In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

Though the applicant is clearly inadmissible, no purpose would be served in determining whether she is eligible for a waiver. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on her husband's approved Immigrant Petition for Alien Worker (Form I-140). However, the applicant's husband, [redacted], is ineligible to adjust his status to that of a lawful permanent resident as the AAO, in a separate decision, has upheld the denial of his waiver application. Therefore, because the applicant has no basis on which to adjust status, her waiver application is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot.