

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H2

FILE:

Office: CHICAGO, IL

Date: AUG 28 2007

IN RE:

Applicant:

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:

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 waiver application was denied by the District Director, Chicago, Illinois, 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on his qualifying relative, his lawful permanent resident wife [REDACTED]. The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and accordingly denied the waiver request. *Decision of the District Director*, dated August 9, 2004. Counsel filed a timely appeal.

The AAO will first address the finding of inadmissible at 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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.

On appeal, counsel states that in December 1992, the applicant used a Japanese passport in order to board a PIA flight to the United States and arrive at the John F. Kennedy International Airport in New York. According to counsel, before disembarking from the airplane, the applicant gave the Japanese passport to a third party. Counsel states that the applicant did not possess or present a passport or any other travel document to an U.S. immigration officer for inspection. Counsel states that in a sworn statement during the secondary inspection, the applicant admitted that "he bought a Japanese passport from [a] vendor in Thailand for \$2,500.00 in order to board a flight to the United States." Counsel asserts that the applicant claimed that before he was inspected by an U.S. immigration officer, he gave the Japanese passport to a third party. Counsel states that the applicant did not commit fraud or willful misrepresentation of a material fact before a U.S. government official in the procurement or attempted procurement of a visa or other documentation or in seeking admission into the United States. Counsel cites to *Matter of D-L- & A-M*, 20 I&N Dec. 409 (BIA 1991), to demonstrate that outside of the transit without visa context, an applicant is not excludable for fraud or willful misrepresentation of a material fact if no evidence indicates that "the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents." According to counsel, the facts in the instant case are similar to those in *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), a case in which the BIA did not find fraud and misrepresentation under section 212(a)(6)(C)(i) of the Act.

The record reveals the following. The applicant arrived in the United States on December 16, 1992, aboard a flight from Germany, bearing no documents to gain entry into the United States. In a sworn statement made before an immigration officer, the applicant conceded that he is a citizen of China. He stated that he is "coming to the United States to look for work and to study" and that he is "hoping to stay in America forever." The applicant stated that he "used the Japanese passport to get on the plane"; that he used a name

different his own on the passport; and that he did not have a U.S. visa in the passport. The applicant stated that he obtained the travel document in Thailand from an unknown person and that an unknown person assisted him to get on the plane. *Record of Sworn Statement in Affidavit Form, dated December 16, 1992.*

The record reveals that the applicant did not present or intend to present to U.S. immigration officials the fraudulent Japanese passport in order to gain admission into the United States. It does not indicate that he was traveling under the transit without visa status, as discussed in *Matter of D-L- & A-M-*. 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. See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961). *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

Thus, based on the facts of the case and the holding in *Matter of D-L- & A-M-*, the AAO finds that the applicant is not inadmissible under 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 August 9, 2004 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.