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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CHICAGO, IL

Date: OCT 30 2008

IN RE: Applicant: [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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of South Korea who was found 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 procure admission to the United States by fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident spouse and U.S. citizen children, born in 1989, 1993 and 1999.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 27, 2005.

In support of the appeal, counsel provides a brief and referenced exhibits. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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...

With respect to the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, counsel contends that the applicant did not intend to defraud and/or willfully misrepresent himself to the government. As stated by the applicant:

I first came to the United States on June 14, 1986 on an F-1 visa ... my wife [REDACTED] and I moved to Chicago, Illinois so that I could pursue my studies.

Shortly after I graduated from Kaes College, my brother...called to tell me he had met [REDACTED]. Both Mr. [REDACTED] and my brother were living in New York at the time. My father was an elementary school principal in South Korea and [REDACTED] was one of my father's former students. I remembered Mr. [REDACTED] from my childhood. He lived in my neighborhood and he would visit my house from time to time.

[REDACTED] and my brother had a conversation about our immigration situation. Both my brother and I did not have legal immigration status in the United States. Mr. [REDACTED] told my brother that he could help. Mr. [REDACTED] said that his neighbor was the Assistant District Director for the New York Immigration and Naturalization Service (INS) District Office. He explained that the Assistant District Director had a number of 'green cards' that he can give to aliens at his discretion each year. With his help, [REDACTED] said that my brother and I could become permanent residents. He reassured my brother that this whole process was legal.

In February or March of 1993, [REDACTED] called my home to discuss my immigration matters. He reassured me repeatedly that I could trust him and that he would take care of everything. When I asked him questions about the process of applying for the 'green card,' he told me not to worry about the details and that everything would be done legally.... After our conversation, I told [REDACTED] that I wanted to think over my situation and discuss it with my wife....

I discussed [REDACTED]'s proposition with my wife and brother for the next month.... [REDACTED]'s sister had filed a petition for [REDACTED] to become a permanent resident but we had to wait for many years....

In South Korea, it is common for a well-connected individual to effectively advocate on behalf of a friend or acquaintance. Also, in South Korea, political leaders and government officials are often given a large amount of discretion in their decisions. Having received [REDACTED]'s reassurances, it seemed only natural that the same would be true in the United States. Having an acquaintance claiming to have a personal relationship with an INS Assistant Director seemed like a legitimate method of obtaining legal immigration status.

[REDACTED] was asking for about \$3,000.00 for his services. I thought the worst thing that could happen was that the Assistant District Director would deny our request and we would lose some money. After discussing the choice with my wife extensively, we felt that we could afford to spend this amount, so we decided to take [REDACTED]'s advice.

I sent my brother a check for the amount of money [REDACTED] requested, my family registry, passport photographs and my fingerprint chart....

That summer, my brother called me and told me that I had to come out to New York to get my photograph taken and that [REDACTED] needed me to send him my passport. I sent

my passport, but flying out to New York was a much harder request to fulfill. Both my wife and I were working very hard at our restaurant. If we were in New York, then the restaurant would be closed and we would lose money. My brother explained that I had to have my picture taken in New York and that there was no way around it....

I life Chicago in the evening, after we closed the restaurant. The next morning, I met Mr. his wife and my brother in front of the INS building. told us to go into the building, take the stairs to the second floor and then take a left turn. He said that we should wait until our names were called and that the INS officers would take our picture....

My brother and I went up the stairs and waiting for our names to be called. After a few minutes, my name was called. An INS officer took my picture and asked me to sign a document. This was the only document I signed while was involved in my immigration matters....When my name was called the second time, an officer handed me a laminated card with my picture and signature....

After I received the card, I went back outside where and his wife were still waiting. I showed the card and he explained that it was an employment authorization card. I felt reassured after I received this document....

About one month after our trip to New York, I received a new Korean passport in the mail.... Inside the passport, there was a stamp from the INS that was temporary evidence of lawful admission for permanent resident....

However, in May 1994, I received a letter from my brother that changed everything. The letter was from the INS and was addressed to me, but had my brother's mailing address. The letter indicated that my application for permanent residence was denied.... When I saw this letter I felt my heart stop. I knew then that something was wrong....

My brother and I tried to contact but he avoided our phone calls.... The more avoided our phone calls, the clearer it became to us that had not told us the truth.

The few times my brother and I were able to speak with we asked him to send us all the paperwork he filed on our behalf, to explain the whole process of our applications.... He refused to send us any paperwork and his only explanation was that he had an argument with his neighbor who was the Assistant Director of the INS in New York. We also repeatedly asked for the Assistant Director's name or telephone number, but he refused to give us any information.

Finally, in September or October of 1996, refunded my brother and me the money that we initially paid him. This did not feel like a victory; the money was the least

of my concerns. I wanted my status to return to the way it was before [REDACTED] came into our lives....

In June 1999, [REDACTED] was able to apply for permit residence based on the petition her sister filed on her behalf.... On February 19, 2002 my wife was mailed her Permanent Resident Card.

In early October 2002, my wife and I had a meeting with our immigration attorney.... [REDACTED] obtained a copy of my immigration file and explained that there was a problem with my case. She suggested that I call another attorney who had more experience in my type of case. [REDACTED] gave me copies of all my documents and I took them home with me.

When I got home, I flipped through the papers [REDACTED] had given me, and I was horrified at what I saw. I saw forms with forgeries of my signatures, my home address was supposedly in New York and I saw pictures of a woman whom I never met who was supposedly my wife. When I saw these documents I felt my throat close and it was hard to breathe. I had never before seen these documents.

I already had a wife whom I love, and children I care about very much. If I knew that [REDACTED] was obtaining my immigration status by lying, I would have never agreed to use his services. I have always tried to live a law-abiding life. I have never been arrested or convicted of any crime in the United States or in any other country. I try to live my life in an upright manner. I know that violating the law can only lead to more trouble. I only agreed to use [REDACTED]'s services because he repeatedly assured me that everything was legal and legitimate. I would never knowingly jeopardize the well being of my wife and children by engaging in illegal activity....

I truly regret my involvement with [REDACTED] and I am willing to help the INS in any way to ensure that [REDACTED] does not take advantage of any other immigrants in the Korean community. I did not know that [REDACTED] was filing fraudulent documents. I never gave him my authorization to sign my name or file a false application. He never truthfully explained to me the process of obtaining my permanent resident. Despite my repeated requests, he refused to send me copies of the paperwork he filed on my behalf. If I had known that [REDACTED] would try to obtain my immigration status through illegal methods, I would never have agreed to use his help....

*Affidavit of* [REDACTED] dated October 30, 2002.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and

- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit...

*DOS Foreign Affairs Manual*, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The applicant's spouse, who has been married to the applicant since 1985, fully corroborates and supports her husband's statements in her own notarized affidavit, dated October 30, 2002. As such, based on the applicant's detailed affidavit and the corroboration from the applicant's spouse, a witness and active participant to the events in question, it has been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud and/or misrepresentation.

Based on the record, it has not been established that the applicant made a willful or fraudulent misrepresentation to procure admission to the United States. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether he has established extreme hardship to his lawful permanent resident spouse. Accordingly, the appeal will be dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.