

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



H2

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 30 200

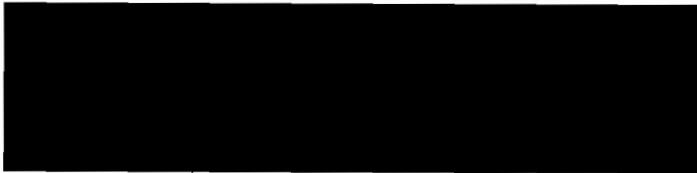
IN RE:



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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center 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), and the relevant waiver application is thus moot. The matter will be returned to the Director for continued processing.

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 and children.

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 July 27, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) 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; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a medical prescription for the applicant's spouse; a statement from the applicant's spouse; employment letters for the applicant; W-2 Forms for the applicant and his spouse; tax statements for the applicant and his spouse; affidavits made by the applicant; a statement made by the applicant; a bank statement for the applicant and his spouse; and utility bills. 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 the applicant came to the United States in March 1991. *Form I-601, Application for Waiver of Ground of Excludability*. Counsel asserts that the applicant used a Singaporean passport to leave

China and that the record does not demonstrate that the applicant made any false statements to gain entry to the United States upon his arrival in Los Angeles. *Attorney's brief*. Counsel states that the applicant was inspected and paroled into the United States upon admitting during airport inspection/questioning that he is a Chinese national, not a Singaporean national, and that he did not have any valid entry or passport. *Id.* An Affidavit Statement of Entry written by the applicant in 1997 states that he entered the United States without inspection in 1991. *Affidavit Statement of Entry*, dated March 10, 1997. He presented a Singaporean passport to the immigration officer. *Id.* He used his true and correct name. *Id.* An Amended Statement of Entry written by the applicant in 1997 states that he entered in 1991 with a Singaporean passport bearing own name. *Amended Statement of Entry*, dated April 1, 1997. The nature of the passport and the kind of visa used for entry were uncertain. *Id.* Thus manner of entry was unknown. *Id.* A statement written by the applicant on November 13, 1991 states that he entered the United States by crossing the border and got arrested in Los Angeles and released in March 1991. *Statement from the applicant*, dated November 13, 1991. The record includes a Form I-94 Departure Card showing that on March 22, 1991 the applicant was paroled into the United States until June 22, 1991 pending an exclusion hearing. An Order to Show Cause dated March 25, 1992 states that the applicant entered the United States without inspection. The AAO observes that the record does not include any Record of Sworn Statement or airport inspection notes. The Director found the applicant inadmissible under 212(a)(6)(C)(i) of the Act for presenting a bogus Singaporean passport to an immigration officer in 1991. *Decision of the Director*, dated July 27, 2006.

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 record does not document that the applicant misrepresented himself to an immigration inspector at the airport in 1991. While the applicant's affidavit indicates that he presented a Singaporean passport to an immigration officer in 1991, there is no evidence in the record that establishes he did so at a port-of-entry during the inspections process. The applicant in his statements indicates that he entered the United States without inspection and the Order to Show Cause noted above supports this claim, stating that the applicant entered the United States without inspection at an unknown location and date. A check of the relevant Citizenship and Immigration Services (CIS) database also finds the applicant to be documented as having entered the United States without inspection. In that the evidence of record does not establish that the applicant used a fraudulent passport in an attempt to gain admission to the United States, the AAO finds the director to have erred in determining that the applicant is subject to section 212(a)(6)(C) of the Act for having attempted to procure an immigration benefit through fraud or willful misrepresentation of a material fact.

Based on the record, the AAO finds that the applicant did not willfully misrepresent a material fact or commit fraud and he is not inadmissible under sections 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to sections 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) 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 is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as the underlying application is moot. The Director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.