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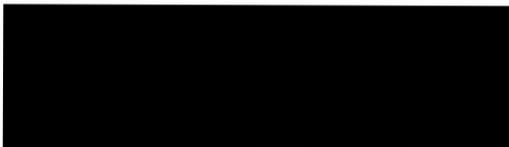
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IN RE:



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:



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).

A handwritten signature in cursive script that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Tampa, Florida. The District Director, Tampa, Florida, dismissed a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of China and the beneficiary of an approved Form I-140 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the father of three U.S. citizen children. The applicant also has an uncle who is a U.S. citizen. The applicant is not, however, the spouse or child of a U.S. legal permanent resident (LPR), or of a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his three children and his uncle.

The AAO notes that the acting district director did not issue a separate decision addressing the waiver application. However, the director addressed the waiver application in his decision dismissing the applicant's adjustment application, indicating that the applicant was ineligible for a waiver of inadmissibility because the applicant does not have a qualifying relative under section 212(i) of the Act. The acting district director denied the adjustment applicant, finding that the applicant is ineligible for the waiver for which he applied. The motion was dismissed on the same basis.

On appeal counsel contended that waiver should be granted as a matter of discretion, asserting that denial would cause extreme hardship to the applicant's U.S. citizen children.

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.

The record shows that, on October 6, 1996 the applicant applied for admission to the United States in Hawaii, allegedly to transit to Canada. The applicant presented a British passport issued to Sui Kei Wong, whom the applicant represented himself to be. That passport had a photograph of the applicant substituted for the photograph it bore when issued.

In a sworn statement, given on that same date, before an officer of USCIS, the applicant stated that he was, in fact, [REDACTED], that he was a citizen of China, that the passport he presented for entry into the United States was not legally issued to him, that he had paid 2,000 Hong Kong dollars for that passport to a man in Guangzhou, China, and that he had no valid visa to enter the United States and had never applied for one.

The applicant indicated, on his Form I-485, Application to Adjust Status, that he last entered the United States during November 1996. In an affidavit he executed on June 29, 2006, he stated that he paid a "snake head" (smuggler) \$38,000 to obtain a visa and get him into the United States on that occasion, and that upon arrival in the United States, he left the airport with the smuggler.

In a sworn statement he executed on March 28, 2006, the applicant repeated that story, with some additional detail. The applicant stated that an immigration officer pulled him from the primary inspection line and asked him to wait on the side. He further stated that the smuggler motioned to the applicant to leave with him, and they left with the smuggler retaining the passport the applicant had used.

The facts reported by the applicant demonstrate that, during November 1996, the applicant again presented a passport issued to someone else to an immigration officer to enter the United States.

The district director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having, by fraud or willfully misrepresenting a material fact, sought to procure a visa or admission into the United States. The applicant does not contest the district director's determination of inadmissibility.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

No other section of law authorizes waiver of inadmissibility for an applicant who, like the instant applicant, has been found inadmissible pursuant to 212(a)(6)(C)(i) of the Act. For the applicant's inadmissibility to be waived, he must demonstrate, first, that he qualifies for waiver pursuant to section 212(i)(1) of the Act, and, second, that waiver should, as a matter of discretion, be granted.

A waiver of inadmissibility under section 212(a)(6)(C)(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children and uncle, the only relatives listed on the applicant's Form I-601, is not relevant under the statute, and is considered only insofar as it results in hardship to a qualifying relative. As the applicant has not demonstrated that a qualifying relative exists, the applicant is ineligible for a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act and the appeal must be dismissed. Because the applicant has been found statutorily ineligible for waiver, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See*



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section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be denied.

ORDER: The appeal is dismissed.