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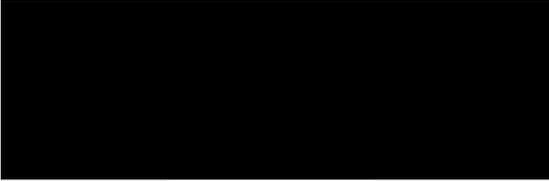
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



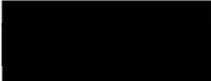
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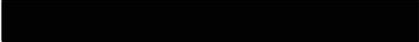
FILE:



Office: GUANGZHOU, CHINA

Date: **MAR 19 2009**

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn and the application declared moot. The matter will be returned to the officer in charge for continued processing.

The applicant is a native and citizen of China 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. Specifically, the officer in charge concluded that the applicant had submitted fraudulent Form I-864, Affidavit of Support (Form I-864) documentation and further, had testified to a consular officer that the documentation submitted was authentic.<sup>1</sup> 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 reside in the United States with his U.S. citizen father and lawful permanent resident mother.

The officer in charge 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated December 14, 2005.

In support of the appeal, counsel provides a brief, dated February 8, 2006, 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...

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<sup>1</sup> The consular officer noted that the Form I-864 submitted by the applicant was fraudulent because the sponsor who had signed the form, [REDACTED], "sponsored 18 other people. Until you are honest about how you obtained this person's documents, you can not be issued a visa...." *Optional Form 194*, dated June 3, 2004.

With respect to the officer in charge's 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's U.S. citizen father, the petitioner of the Form I-130, Petition for Alien Relative (Form I-130) filed on behalf of the applicant and approved in July 1995:

I wish to explain how my son got the joint sponsor's Affidavit of Support....

Because I did not know how to prepare my affidavit of support, I went to an immigration agency in East Broadway, Chinatown, New York.... The office is called [REDACTED]. There I met [REDACTED] who told me that her office had great experience in preparing visa documentation and affidavits of support.... When she saw my income taxes, she told me that my income was not sufficient and that I had to find a joint sponsor.... She said that she could find a sponsor.... I paid \$2,600.00 for the preparation of the documentation....

I did not know that the affidavit of support and the documents were false. I trusted [REDACTED] because she appeared very knowledgeable and seemed concerned to help me.

After my son called me following his interview...I assured him that the documents were good. I was relying on [REDACTED] representations.

Then I went to [REDACTED] and told her that the Consulate had told my son that the Affidavit of Support was not a good document. Ms. [REDACTED] said to me that all the documents were good. She then offered to help me by finding another joint sponsor. She then prepared a new package of documentation. I sent these documents to my son in China....

After the Consulate rejected the second documents, I went to [REDACTED] again and told her that she had lied to me: none of the documents were good for my son. I threatened to sue her: she gave me my money back....

I want to make it clear that I did not know that the documents prepared for me by the Chinese service agency were false. I did not suspect [REDACTED] of bad deeds. Only after the Consulate rejected the second affidavit of support did I realize I had been cheated....

I have decided to report her fraudulent actions to the American government.<sup>2</sup>

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<sup>2</sup> The record establishes that the applicant's father sent letters, by certified mail, to the U.S. Attorney, New York, New York, the Federal Bureau of Investigations, New York, New York, and the Fraud Investigations Unit of the U.S.

I plead with the Consulate to forgive my son for his innocent reliance on my representation. He did not knowingly make false representation at his interviews at the Consulate....

*Affidavit of* [REDACTED] dated February 6, 2006.

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 fully corroborates and supports his father's statements in his own letter. Based on the applicant's father's detailed affidavit, a witness and active participant in the events in question, and based on the fact that the applicant attests to the fact that he acted in good faith on the information provided by his father, the individual who arranged the documentation relating to the affidavits of support and who was defrauded in the process, as outlined in his own affidavit and in the letters sent to various government agencies reporting said fraud, 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 willful misrepresentation.

Based on the record, it has not been established that the applicant made a willful and/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 U.S. citizen father and/or lawful permanent resident mother. Accordingly, the appeal will be dismissed, the prior decision of the officer in charge is withdrawn and the application for a waiver of inadmissibility is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the officer in charge is withdrawn and the application for a waiver of inadmissibility is declared moot. The officer in charge shall continue to process the immigrant visa application accordingly.