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



U.S. Citizenship
and Immigration
Services

#5

[REDACTED]

FILE: [REDACTED] Office: BALTIMORE, MARYLAND Date:

AUG 13 2010

IN RE: [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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

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 attempting to procure a visa to the United States by fraud or willful misrepresentation. The applicant's parents are lawful permanent residents and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her family in the United States.

In a decision dated January 25, 2008, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of District Director* dated January 25, 2008.

On appeal, the applicant's attorney provided an appeal brief and additional supporting documents, which accompanied the Notice of Appeal (Form I-290B).

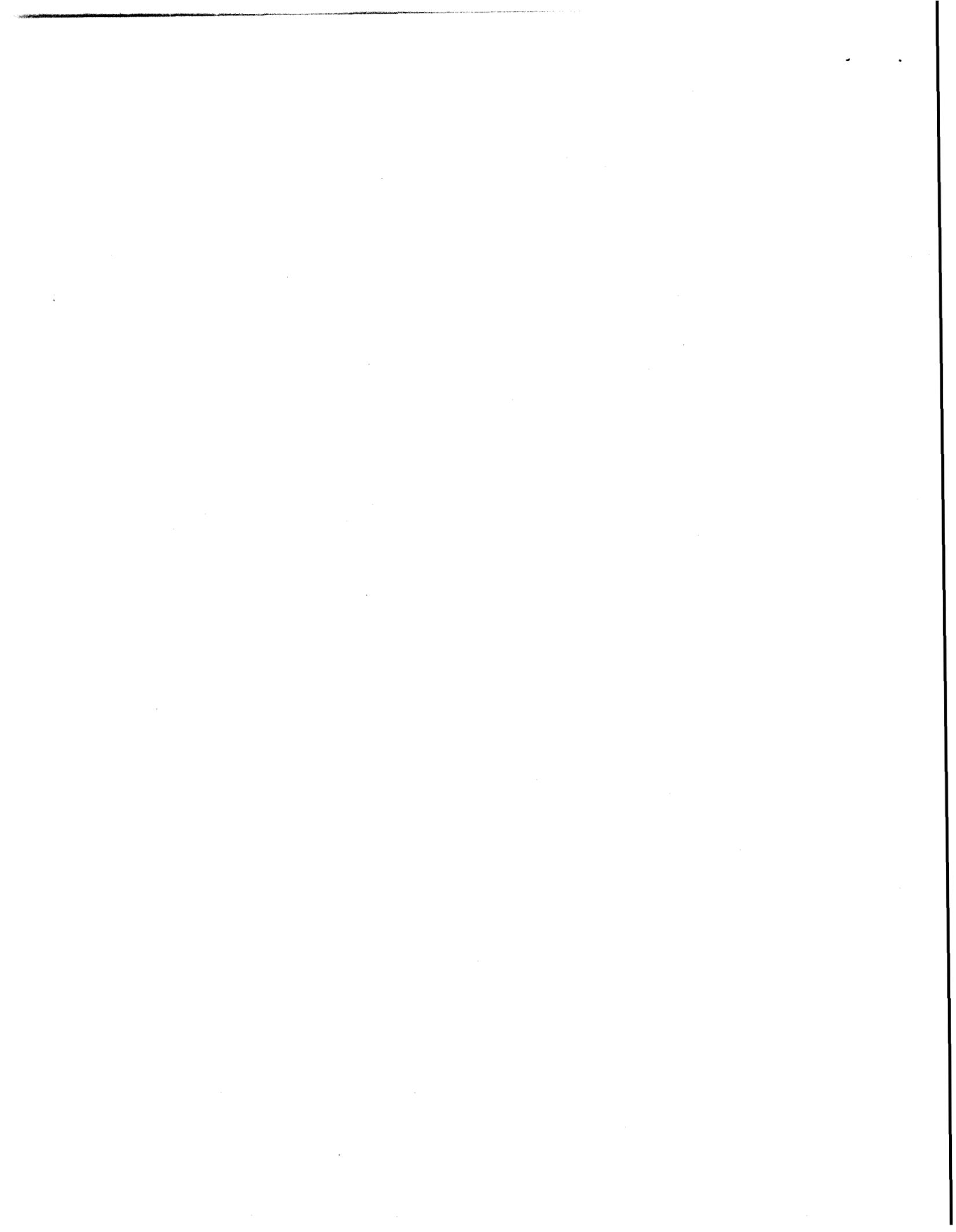
USCIS records reflect that the applicant used a fraudulent passport to board an airplane on route to New York.¹ While the applicant was on her flight, she flushed the Korean passport, which she used to board the plane, down the airplane's toilet. When the applicant was inspected by immigration officials on June 15, 1995, she did not provide any fraudulent documents to immigration officials. At that time, she indicated that she had used a fraudulent passport and provided her real name to immigration officials.

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 inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *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).

As the applicant never presented her fraudulent passport to a U.S. Government official, she is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and does not need a waiver under section 212(i) of the Act. The waiver application is, therefore, moot.

Nonetheless, the applicant was ordered removed on August 3, 1995. As the applicant was previously ordered removed, she falls under Section 212 (a)(9)(a) of the Act. Section 212(a)(9) of the Act states, in pertinent part:

¹ The applicant indicated that she arrived in New York in October of 1996 in her Application for Waiver of Grounds of Inadmissibility (Form I-601), in her Application to Register Permanent Residence or Adjust Status (Form I-485) and in her affidavit provided with her Form I-601. However, the record demonstrates that her arrival in the United States was on June 13, 1995.



Section 212(a)(9). Aliens previously removed.-

(A) Certain aliens previously removed.-

....

(ii) Other aliens.- Any alien not described in clause (i) who -

(I) has been ordered removed under § 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception. - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

The applicant was ordered removed and has remained in the United States. As such, it is necessary that the applicant file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and have it approved in order to adjust her status.

ORDER: The appeal is dismissed as the underlying application is moot.

