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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

[REDACTED]

H5

Date: **OCT 28 2011**

Office: GUANGZHOU, CHINA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: *Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 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 \$630. 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

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China. The matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn, the matter remanded to the field office director to issue a new decision, and the case certified to the AAO for review.

The record reflects that 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 fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a 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 with her husband and child in the United States.

The field office director found that the applicant was "repeatedly involved in submitting fraudulent documents to gain immigration benefit during [her] visa interview in the years 2004 and 2008." The field office director also found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 27, 2009.

On appeal, counsel contends the applicant established extreme hardship to her U.S. citizen husband, particularly considering his mental health and the fact that he takes care of his elderly parents.

The record contains, *inter alia*: several statements from the applicant; an affidavit from Mr. [REDACTED] affidavits from Mr. [REDACTED] parents and brothers; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for China; copies of tax records and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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.

After a careful review of the record, the AAO concludes that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

In this case, the record contains a copy of a Notice of Intent to Deny which states that at the applicant's visa interview on July 2, 2008, "the consular officer noticed [the applicant was] repeatedly involved in submitting fraudulent documents – affidavits of support, co-sponsorship – when [she] applied for [her] immigrant visa." The Notice of Intent to Deny requested "a notarized statement, with translation, describing how [the applicant's] involvement came to being in the

submitting [of] fraudulent documents for co-sponsorship, affidavit of support for a[n] immigrant visa." *Notice of Intent to Deny*, dated January 8, 2009.

In response to the Notice of Intent to Deny, the applicant and her husband submitted affidavits denying their knowledge that any documents were fraudulent. The applicant states that in 1999, her husband filed a Form I-130 family petition that was approved. The applicant states that "[i]n 2003, we were informed by the national visa center to submit affidavit of support for our visa application. In order to file proper document, my husband retained [redacted] immigration agency, which [was] located at [redacted] to prepare all the necessary documents because my husband's English is very limited." The applicant contends that her husband provided his tax returns and other documents to the immigration agency and that about a month later, he picked up "all the necessary documents." The applicant states that her husband mailed her the documents which she brought to her visa interview in 2004. The applicant contends she "was so shocked when the Consulate indicated that the Affidavit of Support (I-864) was not genuine. I had no idea what was going on and I definitely had no intent to submit any fraudulent document." According to the applicant, she immediately called her husband after her interview and contends that he was also shocked. The applicant states that her husband went back to the immigration agency, but found that a new office had opened in its place and that he could not find anyone who knew anything about the previous [redacted] immigration agency. The applicant states that her husband started looking for help from real attorneys and that eventually, they retained their current counsel, filed a new Form I-130 petition, and checked everything carefully with the assistance of their new attorney. *Affidavit from Yin Yan Wu*, dated February 27, 2009; *see also Affidavit from [redacted]* dated September 8, 2008 (stating that the immigration agency "had disappeared" and that he blames himself for using the agency instead of retaining an attorney).

The record contains a copy of two Affidavits of Support (Form I-864) – one submitted by the applicant's husband, Mr. [redacted] and another submitted by a [redacted]. Both Affidavits of Support are supported by copies of tax records, bank account statements, and letters from employers verifying employment and salary. *Letter from [redacted]* dated March 11, 2008; *Letter from [redacted]* dated December 18, 2007. A copy of Mr. [redacted] naturalization certificate, Ms. [redacted] naturalization certificate, and Ms. [redacted] passport are contained in the record. The record also contains a Contract Between Sponsor and Household Member (Form I-864A), signed by Ms. [redacted] husband.

The record also contains notes from the applicant's July 14, 2004, visa interview. The notes state:

Applicant is ineligible under 212(a)(6)(c)(i) of the Immigration and Nationality Act for repeated submission of fraudulent affidavit of support documentation. After submitting an I-864 and accompanying co-sponsor documentation that contained false information that had a direct impact on the applicant's qualification for the visa sought, the applicant was directly warned that further submission of fraudulent documents could lead to a permanent ineligibility. . . . The applicant disregarded the warning and continued to provide fraudulent documents in subsequent overcome

submissions [sic]. This action constitutes the willful presentation of information known to be fraudulent to a U.S. official for the purpose of obtaining an immigrant visa.

It is unclear from the record what document(s) the consular officer considered to be fraudulent. Although the interview notes in the record indicate that the applicant submitted “an I-864 and accompanying co-sponsor documentation that contained false information,” the notes do not specify what information was false. In addition, the notes indicate that the applicant “continued to provide fraudulent documents” and made “repeated” submissions of fraudulent documentation. However, there is no indication in the record showing the dates of the applicant’s repeated submissions. Significantly, the applicant and her husband have consistently maintained they had no idea they submitted fraudulent documentation. *Affidavit from* [REDACTED] *supra*; *Affidavit from* [REDACTED] *supra*; *Application for Waiver of Grounds of Inadmissibility (Form I-601)*, dated August 26, 2008 (“ I was not aware that the Affidavit of Support did not meet the requirement when I applied for my visa on the first time in 2004, 212(a)(6)(c).”); *cf. Letter from* [REDACTED] dated February 19, 2009 (stating that the applicant “immediately denied her knowledge of the falsity of the alleged document and she also denied her intent to deceive the officials to procure her visa.”). Moreover, as stated above, tax records, bank account statements, and letters from employers support both of the Form I-864’s in the record and, therefore, it is unclear what information is purportedly “false.”

Therefore, the AAO remands the case to the field office director to issue a new decision with specific information addressing the finding of inadmissibility. The field office director shall include additional information addressing the fraudulent document(s) in the file and return the matter to the AAO for review.

ORDER: The field office director’s decision is withdrawn, the matter remanded to the field office director to issue a new decision, and the case certified to the AAO for review.