



U.S. Citizenship
and Immigration
Services

[REDACTED]

115

DATE: NOV 14 2012 OFFICE: DETROIT, MI

FILE: [REDACTED]

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.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

f/ Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The applicant is a native and a 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 sought a benefit under the Act through fraud or willful misrepresentation. She is married to a U.S. citizen and the mother of a U.S. citizen son and daughter. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated September 19, 2011.

On appeal, the applicant asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *Form I-290B, Notice of Appeal or Motion*, dated October 7, 2011.

The record of proceeding includes, but is not limited to, the following evidence: counsel's briefs; statements from the applicant and her spouse; a psychological evaluation relating to the applicant's spouse; tax records for the applicant and his spouse; documentation relating to the applicant's spouse's restaurant business; and documentation previously submitted in support of the applicant's asylum and adjustment of status applications. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **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 chapter is inadmissible.

The Field Office Director indicated in his September 19, 2011 decision that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States on June 13, 2000 using a fraudulent passport. He based this finding on what he indicated was the applicant's own admission at the time of her July 20, 2011 adjustment interview.

Counsel, however, asserts that the applicant's apparent admission resulted from her misunderstanding of the question asked by the immigration officer. He states that, while the applicant used a false travel document to board the airplane that brought her to the United States, she never presented this document to any U.S. government official, discarding it before she

arrived. He further contends that upon her arrival in the United States, the applicant provided her real name and requested asylum.

In the present case, the record contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which includes the following exchange between an immigration inspector and the applicant at the time of her June 13, 2000 arrival:

Q: Upon arrival at Chicago O'Hare International Airport today, you had no documents. Is this correct?

A: Yes

Q: Where is your passport, and travel documents?

A: In the bathroom on the airplane

Q: How did you board the plane with no documents?

A: I had them on the plane and then I threw them away.

The Record of Sworn Statement also indicates that the applicant provided her true name and date of birth upon her arrival in the United States and that she requested asylum.

The AAO notes that the Board of Immigration Appeals (BIA) has long held that fraud or the 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 U.S. Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of D-L-M- & 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); *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

In that the record establishes that the applicant used fraudulent documentation only to travel to the United States and did not present that documentation to a U.S. official for admission, she is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

As the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, she does not require a waiver. Accordingly, the appeal will be dismissed as the underlying waiver application is unnecessary.

ORDER: The appeal will be dismissed as the underlying waiver application is unnecessary.