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**U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services**

*ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536*

Jun 10 03 01h2212

FILE: [REDACTED] Office: CLEVELAND, OHIO

Date JUN 10 2003

IN RE: Applicant: [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:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of Jamaica who entered the United States (U.S.) without a lawful admission or parole in 1986. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having been involved with drugs, misrepresenting his identity and claiming to be a U.S. citizen. The applicant is the unmarried son of a naturalized U.S. citizen, [REDACTED] and he is the beneficiary of an approved Petition for Alien Relative filed by his mother on December 7, 1995. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his U.S. citizen mother and father and denied the application accordingly.

On appeal, counsel asserts that there is no evidence to support the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "BCIS") finding that the applicant was involved with drugs, and that the applicant never admitted to having committed the essential elements of a controlled substance offense. Counsel asserts further that the record does not substantiate the INS finding that the applicant provided false information to law enforcement officers or that he made a false claim to U.S. citizenship. Counsel additionally asserts that the only misrepresentation made and admitted to by the applicant pertained to his attempts to obtain work in the United States. Counsel concludes that in the event that the applicant is inadmissible, he has established that his U.S. citizen mother and father would suffer extreme hardship if he were removed from the United States.

The AAO finds that the evidence in the record does not substantiate the district director's conclusion that the applicant was involved in drug activity or that he admitted to any such involvement. The AAO finds further that the record contains no convincing evidence to indicate that the applicant claimed to be a U.S. citizen in order to obtain an immigration benefit or a benefit under Federal or State law. Moreover, the evidence in the record fails to indicate that any misrepresentations made by the applicant were made in

order to procure an immigration benefit, as required by section 212(a)(6)(C) of the Act.

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

(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 Act is inadmissible.

(ii) Falsely claiming citizenship. -

(I) In General- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

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

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 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.

The evidence in the record reflects that the applicant strongly denies involvement in any criminal activity other than possessing an open beer container in 1997 - a misdemeanor for which he was ordered to pay a \$25.00 fine and which is not a ground of inadmissibility under the Act. Although the applicant was arrested and charged with kidnapping in 1988 and drug-related crimes in 1989 and 1999, the evidence in the record indicates that all of the cases were dismissed and that the applicant was never found guilty of the crimes. Mere arrests are an improper basis for finding the applicant inadmissible, given the lack of evidence that the applicant committed or admitted to committing the essential elements of any drug-related crimes or any crime involving moral turpitude.

Moreover, the fact that the applicant may have used aliases at the time of his arrests does not substantiate a finding that the applicant attempted to falsely claim U.S. citizenship. Nothing in the record indicates that the people whose names the applicant allegedly used, were U.S. citizens. Furthermore, even if the applicant did claim U.S. citizenship at the time of his arrests, there is no indication in the record that he made the claim in order to obtain a benefit under the Act or in order to obtain a benefit under Federal or State law.¹

The applicant also denies that he ever willfully misrepresented his identity, and there is no evidence in the record to indicate that, even if the applicant did misrepresent his identity, it was done in order to procure an immigration benefit under the Act, as specified in section 212(a)(6)(C)(i) of the Act.

Based on the above factors, the AAO finds that the grounds for inadmissibility listed in the district director's decision have not been substantiated, and that based on the evidence in the record, the applicant is not inadmissible pursuant to section 212(a)(6)(C) of the Act.² The issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is therefore moot and will not be addressed.

ORDER: The district director's decision is withdrawn and the appeal is dismissed as moot.

¹ It is noted that an alien found inadmissible under section 212(a)(6)(C)(ii) of the Act, for falsely claiming U.S. citizenship is ineligible to apply for a waiver under section 212(i) of the Act. Since the district director accepted and adjudicated the applicant's waiver of inadmissibility pursuant to section 212(i) of the Act, it would appear that the district director did not find the applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

² It is noted that although the applicant worked illegally in the United States and entered the United States without inspection, these grounds of inadmissibility are waived for the applicant pursuant to section 245(i) of the Act and 8 C.F.R. § 245.1(b).