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U.S. Citizenship  
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FILE: [REDACTED]

Office: SANTA ANA, CA

Date: DEC 05 2005

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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 procured admission to the United States by fraud or willful misrepresentation. The applicant seeks 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.

The district director found that based on the evidence in the record, the applicant had failed to establish the requisite relationship for waiver eligibility. The application was denied accordingly. *Decision of the District Director*, dated June 2, 2004.

On appeal, counsel states that the applicant has now married a United States citizen and that the applicant's spouse and children would suffer extreme hardship if the applicant departs from the United States. *Brief in Support of Eligibility for I-601 Waiver*, dated August 6, 2004. In support of these assertions, counsel submits a declaration of the applicant's spouse; a copy of the license and certificate of confidential marriage for the applicant and her spouse; a copy of an abstract of birth for the applicant's child; a copy of the United States birth certificate of the applicant's spouse; a copy of a pregnancy medical report for the applicant and a color photograph of the applicant and her family.

The record reflects that, during June 1991, the applicant obtained entry into the United States by presenting a counterfeit passport to immigration officials. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (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 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 [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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to

section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that the decision of the district director was not made in error because, at the time of the district director's decision, the applicant and her spouse were not yet married. *See License and Certificate of Confidential Marriage*, dated June 28, 2004 and *Decision of the District Director*, dated June 2, 2004. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the application is without prejudice. The applicant may file a new Form I-601 waiver application when sufficient evidence is available. The AAO notes, however, that if the applicant's spouse were considered a qualifying relative under the instant waiver application, the record fails to establish extreme hardship. Although counsel asserts that the applicant's departure from the United States would cause extreme hardship to her spouse, counsel's statements are focused on hardship imposed on the applicant's children and stepchildren who are not qualifying relatives pursuant to section 212 (i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.