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U.S. Department of Homeland Security
20 Mass. Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:  Office: BALTIMORE DISTRICT OFFICE Date: **JAN 28 2005**

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

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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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a 39-year-old native and citizen of Nigeria. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He seeks a waiver of inadmissibility in order to adjust his status that of a lawful permanent resident. The applicant is a derivative applicant for adjustment of status on his wife's application to adjust her status pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved employment-based immigrant visa petition in the category of a skilled worker or professional as described in INA § 203(b)(3)(A)(i) or (ii); 8 U.S.C. § 1153(b)(3)(A)(i), (ii). The AAO notes that the applicant's wife was also found inadmissible by the district director. The appeal of this denial is before the AAO and a decision in the case of the applicant's wife is being issued under separate cover simultaneously with this decision. The entire record was reviewed and considered in rendering a decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admission that he sought to procure admission to the United States by fraud in 1987. *Notice of Intent to Deny* (October 31, 2002) at 2. The applicant does not contest the district director's inadmissibility determination. The question on appeal is whether the applicant is eligible for a waiver.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) *in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1) (emphasis added). The district director denied the waiver below because “[I]t is the opinion of this Service that the information and documentation fails to establish that your United States Citizen [sic] spouse, [REDACTED] would suffer ‘extreme hardship’ in the case of your removal from the United States.” *Decision of District Director*, at 2. This statement is in error. The applicant's wife is not a U.S. citizen, nor is she a lawful permanent resident. As stated above, she is an *applicant* for adjustment of status to that of a lawful permanent resident. She is not a qualifying relative under the statute for whose benefit a waiver of inadmissibility may be granted under INA § 212(i). The district director's analysis of whether she would suffer extreme hardship is therefore improper.

The applicant asserts for the first time on appeal that his father is a U.S. citizen. There is no evidence of his father's citizenship on the record. Furthermore, the applicant notes on his Form G-325, *Biographic Information*, completed in 2001, that his father is deceased.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. The AAO finds that there is no evidence to support that the applicant is the spouse, son or daughter of a U.S. citizen or lawful permanent resident. Therefore, he appears to be statutorily ineligible to seek a waiver of inadmissibility section 212(i) of the Act at this time. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.