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U.S. Citizenship  
and Immigration  
Services

[Redacted]

H2

FILE:

[Redacted]

Office: PHILADELPHIA, PA

Date: SEP 07 2006

IN RE:

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]

PHOTOCOPY

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.

*James A. Wiemann*  
for

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States under 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 attempted to procure entry into 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 with her three U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, as the applicant did not have a qualifying relative under section 212(i) of the Act and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated February 22, 2001.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver. *Form I-290B, dated March 20, 2001.* In a letter to the Service dated January 3, 2001, counsel asserted that the applicant was eligible for a section 212(h) waiver, and that the basis of this waiver would be the extreme hardship suffered by the applicant's U.S. citizen children. *Letter to the Service, January 3, 2001.*

In support of these assertions, counsel submits a letter to the Service, dated January 3, 2001. The record also includes, but is not limited to, copies of U.S. birth certificates for the applicant's children; medical notes regarding one of the applicant's U.S. citizen children; a statement by the applicant; earnings statements for the applicant's spouse; tax statements for the applicant and her spouse; a copy of the applicant's birth certificate from Ghana; a copy of the applicant's passport from Ghana; a copy of the applicant's marriage certificate; a Record of Sworn Statement, dated February 1, 1993; and the Liberian identification used by the applicant. The entire record was reviewed and considered in rendering this decision.

Prior to analyzing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the timeliness of this appeal. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The record indicates that the District Director issued the decision on February 22, 2001. It is noted that the Director properly gave notice to the applicant that she had 33 days to file the appeal. The appeal fee was received by the Service on March 28, 2001, or 34 days after the decision was issued. The Service stamped the Form I-290B as having been received on April 31, 2001. This is clearly an error on the Service's part, as April only has 30 days. As it is unclear as to when the Form I-290B was received due to the error of the Service, the AAO will consider the Form I-290B to be timely filed and use March 20, 2001, the date the applicant listed on the Form I-290B, as the date of filing.

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

- (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 that:

- (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.

The record reflects that the applicant admitted in her adjustment of status interview to using a false Liberian identification card to gain admission to the United States. *Decision of the District Director on application for status as permanent resident, dated February 22, 2001; Record of Sworn Statement, dated February 1, 1993; and the Liberian identification used by the applicant.*

The AAO finds that counsel erred in asserting that the applicant is eligible and qualifies for a section 212(h) waiver based on the extreme hardship her U.S. citizen children would suffer. Individuals found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of certain crimes may be eligible for a section 212(h) waiver. There is nothing in the record to demonstrate that the applicant has committed or been convicted of a criminal offense. Additionally, the Service found the applicant inadmissible under section 212(a)(6)(C)(i), not section 212(a)(2)(A)(i)(I). *Decision of the District Director, dated February 22, 2001.* Individuals found to be inadmissible under section 212(a)(6)(C)(i) may be eligible for a section 212(i) waiver, not a section 212(h) waiver.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). In the present case, there is nothing in the record to show, nor does the applicant claim to have a lawful permanent resident or U.S. citizen spouse or parent. As such, the applicant does not have a qualifying relative and is not eligible for a section 212(i) waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.