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**U.S. Citizenship
and Immigration
Services**

H2

FILE:

Office: BOSTON, MA (HARTFORD, CT)

Date: **MAR 30 2007**

IN RE:

Applicant:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Brazil who entered the United States using a substituted passport and different name. The applicant is thus 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), as an alien who gained admission into the U.S. through fraud or willful misrepresentation of a material fact. The applicant is the beneficiary of a Form I-140, Immigrant Petition for Alien Worker, and he wishes to adjust his status to that of a lawful permanent resident. The applicant presently seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on the claim that his removal from the United States will cause extreme hardship to his U.S. citizen son.

The district director concluded that the applicant's child was too young to be a qualifying relative for section 212(i) waiver of inadmissibility purposes, and that the applicant was therefore statutorily ineligible for relief pursuant to section 212(i) of the Act. The application was denied accordingly.

On appeal the applicant indicates, through counsel, that his son is a qualifying relative for section 212(i) waiver of inadmissibility purposes, and the applicant asserts that his son will suffer extreme medical and financial hardship if the applicant is removed from the United States.

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.

The applicant's inadmissibility under section 212(a)(6)(C) of the Act is not disputed in the present matter.

Section 212(i) of the Act provides that:

(1) The Attorney General [now Secretary, Department of Homeland Security, "Secretary"] 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 [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* or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child. (Emphasis added.)

Section 212(i) of the Act thus provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. It is noted that the section 204 of the Act marriage and domestic violence related provisions referred to in section 212(i)(1) of the Act do not apply to the present case. The qualifying family

members in the present matter are thus limited to a U.S. citizen or U.S. lawful permanent resident spouse and/or parent.

The record reflects that the applicant's wife is from Brazil, and that she is not a U.S. citizen or U.S. lawful permanent resident. The applicant's wife is thus not a qualifying relative for section 212(i) of the Act purposes. Moreover, the record contains no evidence to indicate that the applicant's parents are U.S. citizens or U.S. lawful permanent residents. Although the record contains a birth certificate reflecting that the applicant has a U.S. citizen son, born February 13, 2003, the applicant's son is not a qualifying relative under the terms of section 212(i) of the Act. The asserted hardship to the applicant's son will thus not be considered.¹

The regulation provides in pertinent part at 8 C.F.R. § 103.2(b)(8) that:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis

In the present matter the evidence in the record fails to establish that the applicant has a qualifying relative under section 212(i) of the Act. The applicant is thus statutorily ineligible for relief under section 212(i) of the Act.

The burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet his burden. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.

¹ It is noted that the district director's statement that the applicant's son is not a qualifying relative for section 212(i) of the Act purposes because of his young age, is erroneous. It is not the applicant's son's age that disqualifies him for section 212(i) of the Act purposes, but rather the fact that, under the present circumstances, the statutory terms of section 212(i) of the Act do not include extreme hardship to a U.S. citizen child as grounds for a waiver of inadmissibility.