



U.S. Citizenship
and Immigration
Services

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FILE:

Office: KINGSTON

Date: JUN 05 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility

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, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Kingston, Jamaica, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The matter is remanded to the officer in charge for further action consistent with this decision.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(A)(ii), for attempting to procure immigration benefits by fraud or willful misrepresentation and for seeking admission within 10 years of his departure from the United States while under an outstanding order of removal. *See Officer in Charge's Decision*, dated April 19, 2004.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See Officer in Charge's Decision*, dated April 19, 2004. The officer in charge also determined that the unfavorable factors outweighed the favorable factors.

On appeal, counsel asserts that the applicant has established that his U.S. citizen spouse would suffer extreme hardship. *See Form I-290B*, dated May 20, 2004.

The AAO finds that in the present case, the officer in charge specifically cited section 212(a)(6)(C)(i) of the Act as the relevant ground of inadmissibility. The officer in charge states:

The applicant had a pending order of deportation pending at the time of his departure. Information contained in the applicant's file shows that the (sic) he has been married three times; his second marriage, also to a US Citizen ended May 1995 on grounds of infidelity, which led to a prior form I-130 being withdrawn by her. During the immigrant visa interview at the American Consulate in Kingston, Jamaica, the applicant failed to reveal material facts pertaining to his deportation proceedings, and subsequent departure from the United States. *Officer in Charge's Decision*, dated April 19, 2004.

There is no evidence in the record of proceedings forwarded to the AAO as to what transpired at the Consulate interview and on what fraud or willful misrepresentation of material fact the officer in charge based his finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

The officer in charge also states:

The petitioner, a forty-year-old female and naturalized US citizen submits that she is facing financial and emotional hardship. She submits that she has two children by the applicant. She emphasized that it is a dream of hers and her husband to send their children to college. She further states she would be unable to attain their dream of a college education for their children on the amount she currently earns at her job. She also spoke of plans to further her

own education by attending night school, while her husband could care for (sic) their children. She stresses that she believes that families should cohabit physically. She closed by asking for (sic) that her husband be allowed to return to the United States. *Officer in Charge's Decision*, dated April 19, 2004.

There is no evidence in the record of proceedings forwarded to the AAO as to how the officer in charge obtained this evidence in regard to the hardship claimed by the applicant's U.S. citizen spouse. If it was obtained during the interview at the Consulate there are no notes or sworn statement. If it was obtained through an affidavit submitted with the Form I-601, the affidavit is not attached.

The regulation at 8 C.F.R. § 103.3(a)(2)(iv) states that, if the reviewing official forwards the appeal to the AAO, it must be accompanied by the related record of proceeding. The reviewing official, in this case the officer in charge, Kingston, Jamaica, failed to forward the complete record of proceedings, since, as discussed above, the record before the AAO does not contain information pertinent to the appeal. Because the officer in charge has failed to forward the complete record of proceedings, the AAO finds it necessary to remand the present matter to the officer in charge in order to compile a complete record of proceeding containing all documentation the officer in charge used in making his decision. The complete record of proceeding shall then be returned to the AAO to complete the appeal process.

ORDER: The matter is remanded to the officer in charge for further action consistent with the present decision.