**U.S. Department of Homeland Security**
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEWARK Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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 submitting a fraudulent passport in connection with his attempted entry to the United States on July 5, 1992, at Miami International Airport. The applicant subsequently withdrew his application for admission and later reentered the United States without inspection in 1998. The applicant's employer submitted a Petition for Alien Worker (Form I-140), on behalf of the applicant on July 31, 2000. The petition was approved on December 7, 2000, and the applicant, through counsel, subsequently applied for adjustment of status pursuant to section 245 of the Act. During the course of the applicant's adjustment of status interview, it became apparent that he had previously sought to enter the United States through fraud. As a result, the applicant was requested to submit additional evidence in the form of an Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), evidence that he was the spouse or son of a U.S. citizen or Lawful Permanent Resident, and evidence of extreme hardship to the qualifying family member.

The applicant, through counsel, submitted the Form I-601 on February 11, 2003 accompanied by a copy of the birth certificate of his U.S. citizen daughter, and a brief statement indicating that he was the father of a U.S. citizen daughter, and that his daughter would suffer extreme hardship if he were forced to leave the United States due to the difficult economic situation in Brazil and the country's difficulties with crime. The district director issued a Notice of Intent to Deny (NOID) in connection with the waiver application on May 9, 2003, finding that the applicant had failed to establish that he was the spouse or son of a U.S. citizen or alien lawfully admitted for permanent residence, and thus eligible to seek the waiver. *Notice of Intent to Deny*, dated May 9, 2003. The applicant was given 30 days to submit a response to the NOID, but submitted no additional evidence or other response. Consequently, the district director issued a decision denying the waiver on July 30, 2003. Counsel submitted an appeal on August 22, 2003, providing a brief statement on the I-290B in support of the appeal, which was to have been supplemented by a brief and/or additional evidence submitted within 30 days. Counsel has not filed a brief or any additional evidence in support of the appeal.

The brief statement contained on the I-290B states simply that the 1996 amendments to section 212(i) of the Act should not be applied retroactively to the applicant, and that instead, the version of the waiver provision contained in the statute in effect in 1992 when the applicant attempted entry with the fraudulent passport is what should be applied. Counsel offers no authority or even an argument in support of this contention.

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.
>
> (ii) Falsely claiming citizenship. –

(I) In General –

> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

Counsel's assertion seems to be that because the applicant's fraud arose prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), the Service erred in applying section 212(i) waiver standards developed after IIRIRA was enacted. Counsel's assertion is unpersuasive.

In the Board of Immigration Appeals ("Board") case, *Matter of Cervantes,* 22 I&N Dec. 560, 563-65 (BIA 1999), the Board held that:

> [T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General's, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.
>
> . . . .
>
> [W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

Based on the above holding, it is clear that the district director correctly applied current section 212(i) standards to the applicant's case.

A review of the documentation in the record fails to establish the existence of a qualifying relative through whom the applicant may seek a waiver of inadmissibility to permit him to remain in the United States, and thus supports the district director's decision. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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.