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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

HA
FEB 22 2005

FILE:

[Redacted]

Office: NEWARK, NJ

Date:

IN RE:

[Redacted]

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]

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

The applicant is a native and citizen of Guyana who was found to be 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), for having sought to procure a benefit provided under the Act by fraud or willful misrepresentation. The applicant is the parent of a naturalized citizen of the United States and 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 husband and child.

The district director found that based on the evidence in the record, the applicant had failed to establish the requisite relationship for waiver eligibility. The application was denied accordingly. *Decision of the District Director*, dated September 30, 2003.

On appeal, counsel contends that the applicant did not engage in a fraudulent marriage. Counsel asserts that the applicant was misled into believing that she needed to file a Form I-601 waiver when, in fact, the applicant did not attempt to procure a benefit under the Act by fraud or willful misrepresentation. Counsel indicates that an attorney who was unfamiliar with immigration law accompanied the applicant to her interview. *Form I-290B*, dated October 28, 2003.

The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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.

The record reflects that on June 3, 1992, the applicant was the listed beneficiary on a Form I-130 and Form I-485 filed on her behalf by [REDACTED]. On February 19, 1993, the District Director, New York, New York, denied the Form I-130 and the Form I-485 based on the applicant's failure to appear with her husband for an interview as scheduled on August 24, 1992.

The AAO acknowledges the assertion of counsel that the applicant did not partake in a sham marriage and "strongly believes there was fraud involved in the filing of this application by the person ... hired to file an asylum application on [her] behalf." *Letter from* [REDACTED] dated October 28, 2003. The AAO further notes that counsel has submitted several affidavits to substantiate her claim that the applicant and her husband are "people of good moral fiber." *Id.* See *Affidavit* [REDACTED] dated August 27, 2003. See also *Affidavit of* [REDACTED] dated August 28, 2003 and *Affidavit of Police Officer* [REDACTED] dated August 28, 2003. The AAO finds, however, that the applicant is responsible for the content, truthfulness and accuracy of the applications submitted on her behalf. The AAO notes that the record fails to contain proof substantiating counsel's assertion that the person who assisted the applicant in filing her Forms I-130 and I-485 in 1992 was a "ruthless conman." *Id.* The AAO does not see how anyone other than the applicant would have benefited from the filing of the Forms I-130 and I-485 rather than the asylum application she claims she paid for. In the absence of substantiating information, the AAO is unable to find that the applicant did not engage in fraud or willful misrepresentation in an attempt to obtain a benefit under the Act. Further, the AAO finds unpersuasive counsel's recommendation that Citizenship and Immigration Services hire a handwriting analysis expert and engage in an investigation of these claims. *Id.*

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record demonstrates that the applicant is the parent of a naturalized citizen of the United States. The record does not establish that the applicant possesses a spouse or parent who is a lawful permanent resident or citizen of the United States. Therefore, the AAO finds that the applicant has not established a relationship with a qualifying relative as required by section 212(i) of the Act and, based on the record, the applicant is ineligible for a waiver of her inadmissibility to the United States.

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.