U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

NOV 18 2009

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER 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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that in August 1974, the applicant, a native of the Dominican Republic, made a false claim to U.S. citizenship to an immigration officer; specifically, he presented a U.S. birth certificate belonging to another individual when questioned by immigration officers at a pre-clearance area at Truman Airport, St. Thomas, Virgin Islands, attempting to board a flight to New York. *See Prosecution Report,* dated August 5, 1974 and *Record of Sworn Statement in Affidavit Form,* dated August 2, 1974. The applicant was thus 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 an immigration benefit by fraud or willful misrepresentation.[1] The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen daughter and two grand-children.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on his U.S. citizen daughter and grand-children. In addition, the director noted that the applicant's daughter and grand-children are not qualifying relatives for purposes of a waiver under section 212(i) of the Act. The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Director,* dated July 19, 2007.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal or Motion (Form I-290B), dated July 27, 2007. In addition, on November 18, 2008, the AAO received additional documentation from the applicant in support of the instant appeal, including a letter dated November 4, 2008.[2] The entire record was reviewed and considered in rendering this decision.

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[1] The AAO notes that the applicant was convicted of the offenses of False Personation as United States Citizen and Misrepresentation and Concealment of Facts, in the District Court of the Virgin Islands, on September 10, 1974. The applicant may thus also be inadmissible under section 212(a)(2)(A)(i) of the Act, for having been convicted of a crime involving moral turpitude.

As the AAO has already determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, as noted above, it is not necessary to analyze whether the applicant is also inadmissible under section 212(a)(2)(A)(i) of the Act, for a crime involving moral turpitude and if inadmissible under said section of the Act, whether he is eligible for a waiver of inadmissibility under section 212(h) of the Act.

[2] The applicant, in his letter dated November 4, 2008, asserted that he had no "settled willful intent for committing a crime nor to cause harm to the country.... There are precedent rulings of the Board of Immigration Appeals ("BIA") for conducts where the person has alleged to be citizen of the United States and without examination of

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

> (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 states, in pertinent part, the following:

> (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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the instant appeal, the AAO concurs with the director that the applicant

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the intent during the interview the denial is deemed improper, improvident, unreasonable, unjust and unfair...." *Letter from* [redacted] dated November 4, 2008. The case law cited by the applicant is not applicable to the case at hand, as said cases deal with individuals who were already granted permanent resident status and/or are requesting cancellation of removal; none of the cases cited relate to a request for a waiver of inadmissibility under section 212(i) of the Act. The record clearly establishes that the applicant attempted to procure entry to the United States by fraud and/or willful misrepresentation and the applicant admits to such actions. As he states in the Record of Sworn Statement in Affidavit Form, "Today, when I presented the Puerto Rican Birth Certificate to the immigration officers claiming to be a United States citizen I was violating the law...." *Record of Sworn Statement in Affidavit Form,* dated August 2, 1974. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). It has not been established, by a preponderance of the evidence, that the applicant is not inadmissible under section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation.

has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act exists, namely, a U.S. citizen or lawful permanent resident spouse and/or parent. As such, the instant appeal is dismissed.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.