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U.S. Department of Homeland Security  
20 Massachusetts Ave, N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H2

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] Office: CHICAGO Date: JAN 10 2007

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Chicago, Illinois, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 procured admission to the United States by fraud or willful misrepresentation. The applicant 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.

The district director 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 8, 2004.

The record reflects that, on July 30, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's spouse, [REDACTED] (Ms. [REDACTED]) a U.S. citizen. The applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office on July 9, 2002. The applicant testified that, in August 1999, he entered the United States by presenting a passport and U.S. visa that was issued to another person.

On August 29, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the record established the Ms. [REDACTED] would suffer extreme hardship. *Form I-290B*, dated January 3, 2005. In support of his contentions, counsel submitted only the above-referenced Form I-290B. The entire record was reviewed and considered in rendering a decision in this case.

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.

....

- (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* (emphasis added)

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted fraudulent use of a passport and U.S. visa belonging to another in 1999. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute and will not be considered in this decision. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The record in the instant case reflects that, at the time counsel filed the Form I-290B, the applicant did not possess the required qualifying relationship to qualify for a waiver pursuant to section 212(i) of the Act. The record reflects that, on February 7, 2004, Ms. [REDACTED] passed away. **There is no evidence in the record to suggest that the applicant's parents are lawful permanent residents or U.S. citizens.** As such, the record contains evidence that the applicant was not married to, or had a parent that was, a lawful permanent resident or citizen of the United States, at the time the district director denied the Form I-601 and, therefore, did not qualify for a waiver pursuant to section 212(i) of the Act.

The AAO also finds that, since the applicant's spouse is deceased, the Form I-130 and Form I-485 filed in 2001 are no longer valid, and, since the underlying petition for the Form I-601 is no longer valid, there is no basis upon which the applicant's Form I-601 could be approved.

The AAO notes that the applicant has remarried since filing the Form I-290B and a new Form I-130 based on that marriage has been approved. However, the applicant must file a new Form I-485 and Form I-601 in order to apply for a waiver based on his current marriage.

The burden of proving eligibility for a waiver under section 212(i) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.