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U.S. Citizenship and Immigration Services  
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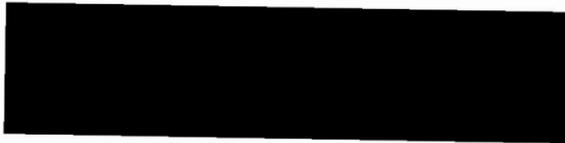
Date: APR 06 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

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.

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).

*Michael Shumway*

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that waiver of inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act is unavailable and denied the waiver application.

On appeal counsel contended that the applicant is inadmissible pursuant to section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude, and that waiver is therefore available to him pursuant to section 212(h) of the Act.

Section 212(a)(6)(C)(ii)(I) of the Act provides:

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 chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

A presentence investigation (PSI) in the record shows that, on December 15, 2000, in Docket number [REDACTED], the applicant was convicted, in Richmond, Virginia, pursuant to his plea of guilty, of a violation of 18 U.S.C. § 1542, False Statement in Passport Application, to wit, claiming that he was [REDACTED], a citizen of the United States, in order to obtain a passport for his own use. In the brief filed on appeal, counsel admitted that conviction.

That evidence, along with counsel's admission, demonstrates that the applicant made a false claim to U.S. citizenship within the meaning of section 212(a)(6)(C)(ii)(I) of the Act and is inadmissible pursuant to that section.

No waiver is available for inadmissibility, *per se*, under section 212(a)(6)(C)(ii) of the Act, although an exception to inadmissibility is provided by section 212(a)(6)(C)(ii)(II) of the Act, which provides:

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

The PSI states that the applicant was born to [REDACTED] and [REDACTED] in Kingston, Jamaica, and counsel submitted no evidence that either of the applicant's parents was ever a citizen of the United States. The record contains no evidence that the applicant, notwithstanding his false claim to U.S. citizenship, should be excepted from inadmissibility pursuant to section 212(a)(6)(C)(ii)(II) of the Act.

On appeal, counsel argued that the applicant's conviction for making a false statement on a passport application constitutes a crime involving moral turpitude and renders the applicant inadmissible pursuant to section 212(a)(2)(A) of the Act. Counsel provided ample authority for that proposition. Counsel noted, correctly, that waiver of inadmissibility under section 212(a)(2)(A) of the Act is available pursuant to section 212(h) of the Act. Counsel further argued that the circumstances of this case are such that waiver should be granted as a matter of discretion.

The AAO does not dispute that the applicant may be inadmissible pursuant to other sections of the Act, in addition to section 212(a)(6)(C)(ii)(I),<sup>1</sup> and that waiver of inadmissibility pursuant to those other sections may be available. Counsel's argument, however, does not demonstrate that the applicant is not also inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act, for which no waiver is available.

The AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act, for which no waiver is available. Because he is inadmissible under that section, which inadmissibility is permanent and not waivable, no purpose would be served in analyzing what additional sections may also render the applicant inadmissible. Because waiver of inadmissibility pursuant to section 212(a)(6)(C)(ii)(I) of the Act is unavailable, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Besides inadmissibility for conviction of a crime involving moral turpitude, as urged by counsel, the record suggests that the applicant may be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for more than a year.