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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: **AUG 26 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. 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 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 willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director found that the applicant was not truthful about his marriage to [REDACTED] and that he attempted to enter the United States using a photo-switched passport in 1988. The district director noted that the applicant was also charged with unlawfully operating a motorcycle without a license in 2000, and domestic violence in 2001. The district director concluded that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated March 29, 2007.

On appeal, counsel contends that the district director erred as a matter of law in concluding that the applicant is inadmissible. Specifically, counsel contends the applicant was never legally married to [REDACTED], and, therefore, did not misrepresent his marital status. In addition, counsel contends the applicant was already granted a waiver for his 1988 attempt to enter the United States with a photo-switched passport. Finally, counsel contends that the applicant's 2000 and 2001 offenses do not render him inadmissible.

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

In general.—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.

In this case, the record shows, and counsel concedes, that the applicant attempted to enter the United States in January 1988 using a photo-switched passport. He withdrew his application for admission and returned to Jamaica. On September 1, 1993, the applicant married [REDACTED] a naturalized U.S. citizen, in Jamaica. [REDACTED] filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved in May 1994. Due to his previous attempt to enter the United States using a fraudulent passport, the applicant submitted an Application for Waiver of Grounds of Excludability (Form I-601), which was approved on May 12, 1995. The applicant entered the United States in June 1995 as a conditional permanent resident.

On December 31, 1998, [REDACTED] came forward with evidence that the applicant never disclosed his first marriage and never obtained a divorce from his first wife, [REDACTED]. Specifically, the record

contains a certified copy of a Marriage Register for [REDACTED] and [REDACTED]. The register states that the applicant and [REDACTED] “[m]arried at Faith Temple [REDACTED] in the parish of Saint Andrew” on February 28, 1987. As the district director’s decision states, on October 25, 1994, and March 25, 2004, the applicant claimed he had never been married prior to his marriage with [REDACTED].

Based on this evidence, the AAO finds that the district director properly found the applicant inadmissible. Counsel’s assertion that the applicant was never legally married to [REDACTED] *Letter from [REDACTED]*, dated July 2, 2007, is contradicted by the Marriage Register in the record. In addition, the letter counsel obtained from Faith Temple Pentecostal Assemblies, which states that there is no record of a marriage being performed between the applicant and [REDACTED] indicates only that the temple found no record of the marriage. *Letter from [REDACTED]* dated April 21, 2007. It does not in any way refute the validity of the Marriage Register in the record. Further, the letter from the Registry General dated April 26, 2007, which counsel asserts supports the applicant’s claim that he was not married to [REDACTED] states only that a search of the Marriage Register was carried out and that “A marriage to [REDACTED] was found.” This does not verify that he was not married to [REDACTED].

Therefore, the AAO concludes that the applicant was lawfully married to [REDACTED] and that his subsequent marriage to [REDACTED] was invalid as the applicant had not yet divorced Ms.

The Form I-130 filed by [REDACTED] on behalf of the applicant was invalid as the applicant was not eligible for the benefit sought as he was married to another woman. The applicant committed fraud with each assertion that he was not married to [REDACTED]. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. *See* section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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).

In this case, the record shows that the applicant obtained a divorce from [REDACTED] on April 27, 2004, and remarried [REDACTED] on June 28, 2004. Therefore, extreme hardship to [REDACTED] must be shown in order for the applicant to be eligible for a waiver. Significantly, neither the applicant nor Ms. [REDACTED] submitted any statements, affidavits, or letters claiming that [REDACTED] would experience extreme hardship if the applicant’s waiver application were denied. Counsel also does not contend that [REDACTED] would suffer extreme hardship. As such, there is no allegation whatsoever of extreme hardship.

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.