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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**

[REDACTED]

#5

FILE: [REDACTED] Office: PHILADELPHIA, PA Date: **AUG 10 2010**

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.

[REDACTED]
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the field office director for continued processing.

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 fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a lawful permanent resident 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 her husband and children in the United States.

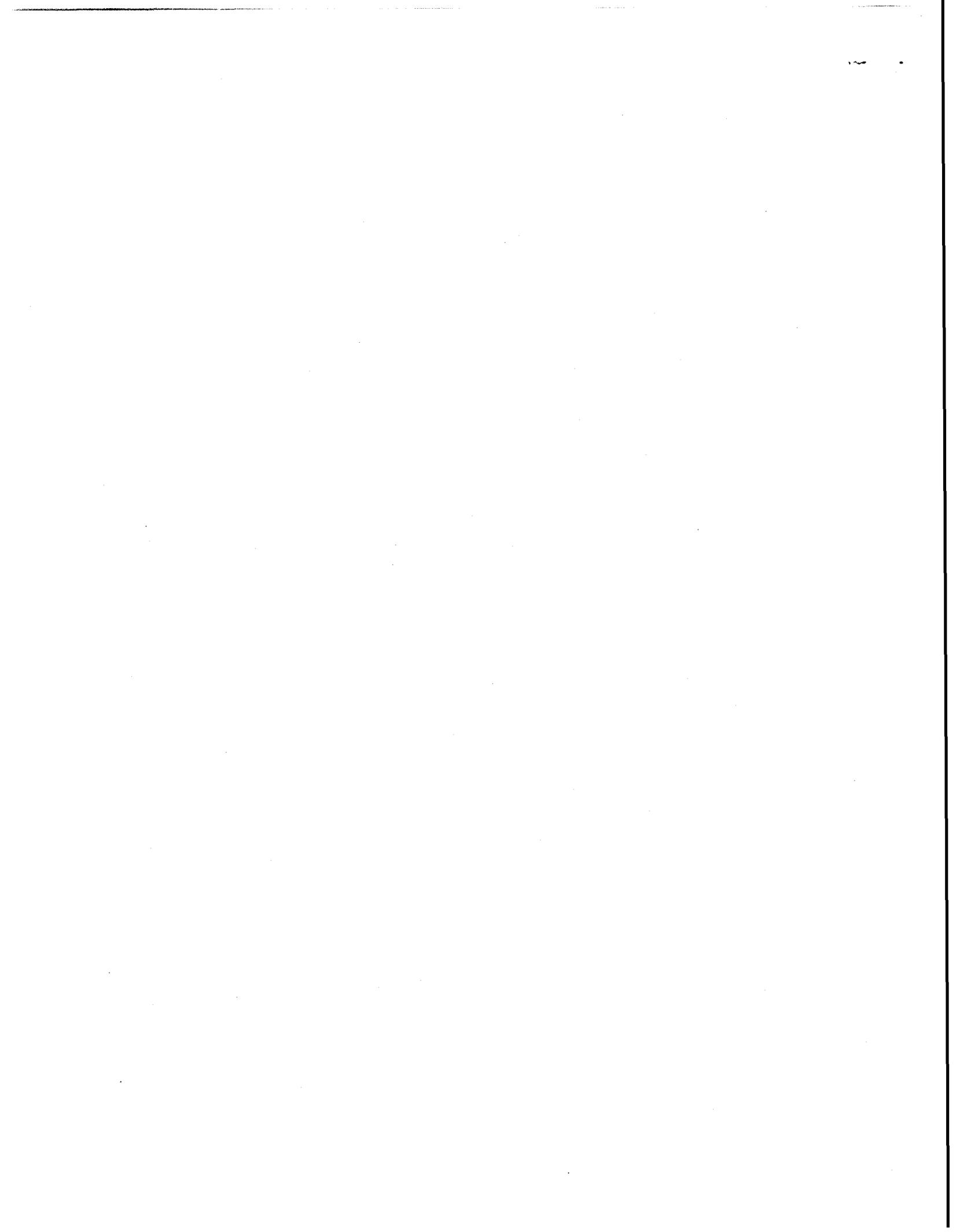
The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated October 9, 2007.

On appeal, counsel contends that the applicant did not commit fraud or willfully misrepresent a material fact and that she is, therefore, not inadmissible. Counsel further contends that the applicant established extreme hardship.

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 her affidavit submitted with the instant case, the applicant recounts that she was flying to England with her friend when there was "plane trouble," the plane landed at JFK airport, and the agents told the passengers to wait for a connecting flight. The applicant contends she called her brother-in-law's family and asked for him. She contends that she was told that he was in the hospital and that the hospital was close to the airport. The applicant and the classmate with whom she was traveling, [REDACTED] left the airport to visit the applicant's brother-in-law in the hospital. The applicant states that [REDACTED] returned to the airport after the hospital visit, but that she remained in the United States. According to the applicant, she "honestly do[es] not remember the full details of how [she] was able to board [the flight in Jamaica] without a passport." She states that she did not have a passport at the time although [REDACTED] had a passport, and that all she had was a Jamaican school identification. The applicant contends that she believed the identification was sufficient for travel as long as she was accompanied by a person with a passport. [REDACTED] dated September 7, 2007; *see also Record of Sworn Statement*, dated August 10, 2007.



The field office director found that the applicant "gained unlawful entry into the United States at JFK International in New York by utilizing a friend's British passport." *Decision of the Field Office Director, supra*. The record contains a sworn statement of the applicant taken in connection with her application to adjust status on August 10, 2007. In that statement, the applicant affirmed that she arrived in the [REDACTED] airport and in response to the question "How did you arrive in the United States?" the applicant responded "on a friend's passport." The applicant stated that her friend was [REDACTED] a British citizen. However, in response to the question "What did you present to U.S. Immigration to enter the U.S.?" the applicant responded "Student ID."

After a complete review of the record, the AAO concludes that the evidence does not support a finding that the applicant is inadmissible for fraud or willfully misrepresenting a material fact in order to procure an immigration benefit. The record contains no documentation of the applicant's entry into the United States in August 1993. Nor is there any record that she misrepresented her identity to U.S. immigration officials at that time. Significantly, the applicant, who is female, was traveling with a male classmate named [REDACTED]. While the applicant's sworn statement is equivocal, the record does not indicate that she presented [REDACTED] passport as her own to U.S. government officials in order to gain entry into the United States.

Under these circumstances, the evidence does not support the finding that the applicant is inadmissible for fraud or willfully misrepresenting a material fact.

The AAO finds that the field office director erred in finding that the applicant committed fraud or willfully misrepresented a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the field office director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The field office director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.

