

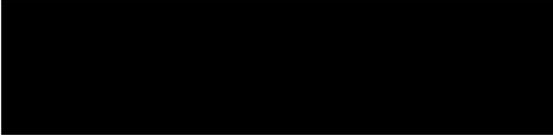
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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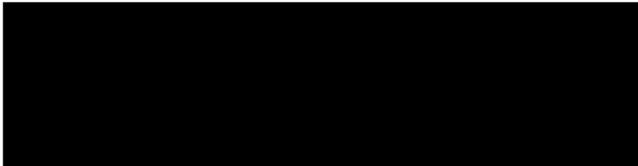
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IN RE:



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:



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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was 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 sought to procure admission to the United States through fraud or misrepresentation of a material fact. The applicant is the mother of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 her children.

The district director concluded that the applicant was statutorily ineligible for a waiver because she did not have a U.S. Citizen or Lawful Permanent Resident spouse or parent. The application was denied accordingly. *See Decision of the District Director* dated October 13, 2007.

On appeal, counsel for the applicant asserts that the applicant is eligible to apply for adjustment of status and should be allowed to apply for a waiver under section 212(i) of the Act despite an amendment requiring that an applicant demonstrate extreme hardship to a U.S. Citizen or Lawful Permanent Resident spouse or parent, but not to a child. *Counsel's Statement in Support of Appeal* at 1. Counsel asserts that the applicant was never charged with fraud and never admitted to fraud and agreed to withdraw her application for admission in 1994 with the understanding that she would later be able to apply for a waiver based on her U.S. Citizen child, and the law that would have applied in 1994 should therefore be applied to her now. *Counsel's Statement* at 3. Counsel further asserts that applicant has demonstrated extreme hardship to her U.S. Citizen daughter if she is denied admission to the United States.

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.

Section 212(i) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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.

The AAO will first address counsel's contention that the director should have applied the waiver provisions of the Act in effect prior to the enactment of the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996 ("IIRIRA") on September 30, 1996. The record establishes that the applicant attempted to enter the United States on July 15, 1994, prior to the 1996 enactment of IIRIRA, with a British passport in the name of her cousin. As noted by counsel, the United States Supreme Court found in *Landgraf v USI Film Prods.*, 511 U.S. 244, 114 S. Ct. 1483, 128 L.Ed. 2d. 229 (1994) that there is a presumption against the retroactive application of statutes and held that a statute has a retroactive effect when:

[I]t would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result. *Landgraf* at 280.

In *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001), the U.S. Supreme Court considered the retroactive application of IIRIRA provisions that made an INA § 212(c) waiver unavailable to the respondent and stated the following:

IIRIRA's elimination of § 212(c) relief for people who entered into plea agreements expecting that they would be eligible for such relief clearly attaches a new disability to past transactions or considerations. Plea agreements involve a *quid pro quo* between a criminal defendant and the government, and there is little doubt that alien defendants considering whether to enter into such agreements are acutely aware of their convictions' immigration consequences. The potential for unfairness to people like [REDACTED] is significant and manifest. Now that prosecutors have received the benefit of plea agreements, facilitated by the aliens' belief in their continued eligibility for § 212(c) relief, it would be contrary to considerations of fair notice, reasonable reliance, and settled expectations to hold that IIRIRA deprives them of any possibility of such relief. [REDACTED]

The Board of Immigration Appeals held that a request for a waiver under section 212(i) of the Act is a request for prospective relief and, as such, its restrictions may be applied to conduct which predates passage of the current statute. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). The BIA stated that a statute is not retroactive if:

[I]t does not impair rights a party possessed when he or she acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. More specifically, an intervening statute that either alters jurisdiction or affects prospective injunctive relief generally does not raise retroactivity concerns, and, thus, presumptively is to be applied in pending cases. [citation omitted]. *Cervantes-Gonzalez* at 564.

Counsel contends that a waiver for the conduct that led to the applicant being found inadmissible should be based upon the law that existed at the time she sought admission into the United States through fraud or willful misrepresentation. The facts of the present matter are distinguishable from those in [REDACTED] where the applicant relied upon the then-existing statute when entering into a plea

agreement. The record contains a sworn statement from the applicant indicting that she attempted to enter the United States on July 15, 1994 with a fraudulent British passport she had obtained by presenting her cousin's birth certificate and she had used the passport on two previous occasions to enter the United States. *See Record of Sworn Statement* dated July 15, 1994. Counsel claims that the applicant relied on the future availability of a waiver under section 212(i) of the Act when deciding to withdraw her application for admission, but as noted by counsel, the applicant did not concede inadmissibility under section 212(a)(6)(C)(i) of the Act. There is no evidence that the availability of a waiver under section 212(i) of the Act influenced the applicant's conduct when she decided to use a fraudulent passport to attempt to enter the United States, and she did not concede excludability on this charge in reliance on the future availability of a waiver.

The evidence on the record establishes that the applicant procured admission to the United States on two occasions and sought admission on a third occasion through fraud or misrepresentation of a material fact, regardless of whether she was found to be excludable on this ground by an immigration judge. The BIA held that section 212(i) of the Act is a request for prospective relief and the amendments of the provision contained in IIRIRA shall apply to conduct that took place prior to the enactment of IIRIRA, and the provision currently in effect will therefore govern the present matter.

The record reflects that the applicant is a fifty year-old native and citizen of Jamaica who attempted to enter the United States with a fraudulent British passport under the name [REDACTED] on July 15, 1994. On her application for a waiver of inadmissibility (Form I-601), the applicant indicated that she has two U.S. Citizen children, but the record indicates that she has no U.S. Citizen or Lawful Permanent Resident spouse or parent. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Since the applicant does not have a qualifying relative, she is ineligible for a waiver of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established she would merit the 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.