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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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Date: **OCT 05 2011**

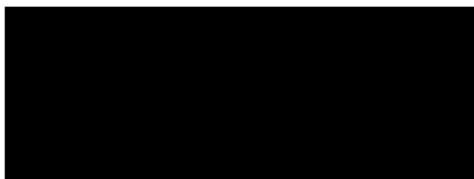
Office: CINCINNATI

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cincinnati, Ohio, and 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 admitted to the United States on July 4, 2003 at New York, New York as a B2 visitor after presenting a fraudulent passport and visa. He 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 procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 his spouse.

The field office 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 14, 2008.

Subsequent to filing this appeal, the applicant departed the United States, and attempted to re-enter the United States on February 3, 2009 using a U.S. Passport and falsely claiming to be a U.S. Citizen. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim of U.S. citizenship in order to gain entry into 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.

(ii) Falsely claiming citizenship. –

(I) 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 Act (including section 274A) or any other Federal or State law is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (ii) 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 applicant attempted to enter the United States on February 3, 2009 by presenting a U.S passport in the name of [REDACTED] and falsely claiming to be a U.S. Citizen. He was found to be inadmissible under sections 212(a)(6)(C) and 212(a)(7)(A)(i)(I) of the Act and was removed from the United States on the same day. *See Form I-860, Notice and Order of Expedited Removal and Form I-296, Departure Verification.* The applicant admitted his true name is Ikenna Umeh and that he was born in Nigeria on May 19, 1973. *See Form I-275, Consular Notification*, dated February 3, 2009. There is no waiver available for this ground of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(i) of the Act or whether he would merit the waiver as a matter of discretion.¹

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.

¹ In addition, as the applicant was removed from the United States, he must now apply for an immigrant visa at the U.S. Consulate in Nigeria. There is currently no underlying application for admission pending upon which to base a Form I-601 waiver application, and the Cincinnati, Ohio Field Office Director no longer has jurisdiction over the waiver application. Thus, the appeal in the present matter must also be dismissed based upon lack of jurisdiction.