

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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

tlg

DATE: DEC 18 2012

Office: ST. PAUL

File: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, St. Paul, Minnesota, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Eritrea 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 having procured, or attempted to procure admission to the United States by fraud or misrepresentation. He is the beneficiary of an approved Petition for Alien Relative (Form I-130), and seeks a waiver of inadmissibility in order to remain in the United States with his son.

The field office director concluded the applicant had failed to establish that his inability to remain would impose extreme hardship upon his son and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, August 17, 2011.

On appeal, counsel for the applicant contends the field office director erred as a matter of law by not finding the applicant entitled to relief under section 237(a)(1)(H)<sup>1</sup> of the Act, 8 U.S.C. § 1227(a)(1)(H), and that the factual findings are contrary to the evidence and the section 212(i) denial an abuse of discretion. The record on appeal does not contain the briefing noted by the applicant's counsel in the Form I-290B filing. The record contains applications for waiver of inadmissibility and for adjustment of status, an application for naturalization, denials of the applications, and supporting documentation. The entire record was reviewed in rendering a decision in this case.

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

- (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)(1) 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 ....

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<sup>1</sup> A section 237(a)(1)(H) waiver for misrepresentation applies to aliens in removal proceedings and waives deportability under section 237(a)(1)(A) of the Act for inadmissibility under section 212(a)(6)(C)(i) at time of entry or adjustment of status. The applicant herein is applying for adjustment of status and needs a waiver of inadmissibility under section 212(i) of the Act, rather than a waiver of deportability, which may only be granted by an immigration judge during removal proceedings.

The applicant entered the United States on May 24, 2003 on an immigrant visa as the spouse of a U.S. citizen. During a June 17, 2008 naturalization interview, USCIS learned that the spouse of whose petition the applicant was the beneficiary had divorced him on March 28, 2002 and that, in addition to having immigrated after the divorce, he had failed to disclose at the time of his 2003 U.S. admission having three children with someone other than the petitioner. In denying the naturalization application, the Service held that prior termination of the marriage invalidated the applicant's lawful U.S. admission as well as the permanent residence derived therefrom, and that nondisclosure of all his children at the time of admission had cut off a line of questioning necessary to determining admissibility and was, therefore, a willful misrepresentation. The applicant requires a waiver of this inadmissibility to adjust his status to that of permanent resident.<sup>2</sup>

A waiver of inadmissibility under section 212(i) requires showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. There is no documentation of any such qualifying relative in this case. The record contains references to hardship the applicant's son would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act.<sup>3</sup> In the present case, as the applicant's former spouse ceased to be a qualifying relative upon her 2002 divorce from the applicant, and where hardship to the applicant's child will only be considered as it may affect a qualifying relative, evidence regarding the applicant's son is not relevant to a waiver determination.

Where the record fails to establish the existence of a qualifying relative, the applicant is ineligible for a waiver under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. The applicant in this case is statutorily ineligible for a waiver under the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> At the time USCIS denied the naturalization application on June 8, 2009, it initiated removal proceedings by issuing the applicant a Notice to Appear. The applicant's son filed a Form I-130 petition for his father on September 29, 2009 and removal proceedings were terminated so that the applicant could apply for adjustment of status before USCIS. A second Notice to Appear was issued on August 17, 2011 after the denial of the application for adjustment of status.

<sup>3</sup> Although the waiver denial refers at page 5 to section 212(h) of the Act, it is apparent that this is a typographical error that should read "212(i)," as it does elsewhere in the decision. Section 212(h) relates only to waiver of inadmissibility under section 212(a)(2) of the Act, not to waiver of the section 212(a)(6)(C) inadmissibility at issue herein. The fact that a son or daughter may be a qualifying relative under section 212(h) thus has no bearing on this case.