



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

7/5

DATE: **NOV 16 2012** Office: NEWARK 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,  
  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, NJ. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record establishes 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 having procured an immigrant visa and subsequent admission to the United States by fraud or the willful misrepresentation of a material fact. He 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 U.S. citizen mother.

The district director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship for his mother. The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated July 22, 2008. In dismissing the appeal the AAO determined that an I-130 petition filed on the applicant's behalf had been revoked and the record did not establish the applicant had a current approved petition on which to base an adjustment of status application, making a waiver application unnecessary.

On motion counsel for the applicant submits a brief contending that the applicant is eligible for a fraud waiver under Section 237(a)(1)(H) to overcome removability and waive the underlying fraudulent act. Counsel further asserts the applicant meets favorable discretion in that he is the son of a U.S. citizen and has resided in the United States for more than 10 years with no criminal arrests or convictions while being gainfully employed and paying taxes since arrival. The entire record was reviewed and considered in arriving at a decision in this matter.

The provision referenced by counsel refers to a waiver of deportability rather than inadmissibility. Even if the applicant is eligible for a waiver of deportability under section 237(a)(1)(H) of the Act, such an application must be adjudicated before an Immigration Judge during removal proceedings, and USCIS has no jurisdiction over such an application. The present appeal relates to a waiver of inadmissibility under section 212(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 record shows that the applicant's mother filed a Form I-130, Petition for Alien Relative in August 1991 on behalf of the applicant as the unmarried child of a lawful permanent resident. The petition was approved in November 1991. In 1998 the applicant submitted an immigrant visa application declaring to be unmarried and signed a Statement of Marriageable Age Applicant, confirming that he understood he would lose his special, immediate relative or preference status or right to benefit from the immigration status of a parent if he were to marry prior to his application for admission at a port of entry. In April 1999 the applicant applied for admission at a port of entry and was granted lawful permanent resident status under classification F24 - Unmarried Son or Daughter of Permanent Resident.

In September 2004 the applicant submitted Form N-400 Application for Naturalization in which he disclosed that he had been married since December 10, 1994. In sworn testimony on May 9, 2005 he confirmed that he had been married since December 10, 1994. The applicant was subsequently issued a Notice to Appear on June 3, 2005, stating that he had deliberately misrepresented his marital status. Those proceedings were terminated to allow the applicant's waiver application to be adjudicated. Pursuant to 8 CFR 205.1(a)(3)(i)(I) the Form I-130 was automatically revoked as of the date of approval once the applicant married.

On July 22, 2008, the district director denied the waiver application. The applicant appealed that decision to the AAO. On February 17, 2011, the AAO remanded the matter to the district director to determine if another valid immigrant petition on behalf of the applicant had been approved, and such evidence was requested on March 2, 2011. In response the applicant submitted a copy of the previously revoked Form I-130 filed by his mother in August 1991, as referenced above.

The viability of the Form I-601 is dependent on an adjustment of status application that is based on an approved petition. In the absence of an approved Form I-130 the Form I-601 is unnecessary. The AAO determined that since the Form I-130 petition submitted by the applicant's mother had been automatically revoked due to the applicant's marriage prior to his admission to the United States, the appeal of the denied waiver must be dismissed.

As the applicant has not established that he is the beneficiary of an approved I-130 petition, the application for a waiver is unnecessary and the underlying application will remain denied.

**ORDER:** The motion will be granted and the underlying application remains denied.