



**U.S. Citizenship
and Immigration
Services**

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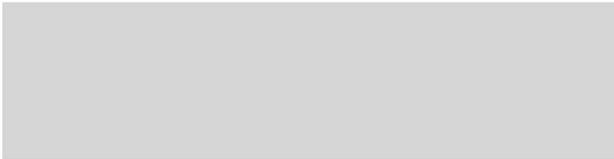


DATE: **MAR 31 2015** Office: NEWARK FILE:

IN RE: Applicant:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. A subsequent appeal and motion to reconsider were dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a second motion. The motion will be granted and the prior decision of the AAO will be affirmed.

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 we determined that a Petition for Alien Relative (Form I-130) 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. *Decision of the AAO*, dated April 7, 2011. On motion we affirmed our prior decision dismissing the appeal because the viability of the Form I-601 is dependent on an adjustment of status application that is based on an approved petition, and that in the absence of an approved Form I-130 the Form I-601 is unnecessary. *Decision of the AAO*, dated November 16, 2012.

On current motion, filed on December 12, 2012, and received at the AAO on December 18, 2014, the applicant asserts that he is eligible for and warrants a grant of a fraud waiver under Section 237(a)(1)(H) to overcome removability and cure the underlying revoked Form I-130. The applicant further asserts that his mother is dependent on him so his forced removal will cause extreme emotional suffering to her, and that he is the sole supporter for his U.S. citizen daughter, who will suffer extreme financial and emotional suffering due to his removal. The applicant states that economic conditions are dire in Jamaica, where he would have little chance of finding employment, but that he is gainfully employed in the United States and has no criminal record.

As noted in our previous decision, the provision referenced by the applicant 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, that application must be adjudicated before an Immigration Judge during removal proceedings, and USCIS has no jurisdiction over such an application. The present appeal and subsequent motions relate 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. . . .

As noted in our previous decision, the record shows that the applicant's mother filed a Form I-130 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 [REDACTED], 1994. In sworn testimony on May 9, 2005 he confirmed that he had been married since [REDACTED] 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 and on February 17, 2011, we 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. We 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.

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NON-PRECEDENT DECISION

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.