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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, NW  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[Redacted]

**JUL 02 2003**

FILE: [Redacted] Office: MIAMI, FLORIDA Date:

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:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Handwritten signature: Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

*Handwritten: JUL0203-03H2212*

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica, and that on February 27, 1992, the applicant attempted to enter the United States by falsely claiming to be a United States citizen. The record reflects further that the applicant was ordered excluded and deported pursuant to sections 212(a)(7)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. §§ 1182(a)(7)(A)(i)(i) and 1182(a)(6)(C)(i) as an alien not in possession of a valid immigration document and as an alien who attempted to enter the U.S. by fraud or a willful misrepresentation of a material fact.

The applicant is married to a United States (U.S.) citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility in order to remain in the United States with his wife.

In his application for a waiver of inadmissibility (I-601 application), the applicant submitted a one paragraph letter stating that he has invested everything he has in the United States and that it would be hard on his wife and two college-bound children if he were deported. The applicant provided no other information about the type of hardship his wife or family would suffer.

The district director found that the applicant failed to establish his wife would suffer extreme hardship if the applicant were removed from the United States. The district director noted further that the applicant's children are not considered qualifying relatives for section 212(i), 8 U.S.C. § 1182(i) extreme hardship purposes.

On appeal, the applicant, through counsel, states that the applicant never made a false claim of U.S. citizenship and thus is not inadmissible. Counsel also asserts that the applicant's family would suffer extreme emotional, psychological and financial hardship if he were removed from the U.S. and that the Immigration and Naturalization Service, ("INS", now known as the Bureau of Citizenship and Immigration Services, "BCIS") erred in not considering hardship to the applicant's children. Counsel states that the applicant has no family ties outside of the U.S. and that he is a hardworking upstanding man. Counsel stated further that an additional brief and evidence would be filed within 30 days (by December 19, 2002). No further evidence or brief was received by the AAO.<sup>1</sup>

A thorough review of the evidence in this case reflects that the record contains clear evidence that the applicant attempted to

<sup>1</sup> It is noted that on December 10, 2002, counsel, [REDACTED] withdrew her representation for the applicant in this matter. On December 13, 2002, new counsel for the applicant, [REDACTED] filed a motion requesting an additional 3 weeks to file information in the applicant's case (approximately January 10, 2003). No further brief or evidence was received by the AAO.

enter the U.S. on February 27, 1992, by falsely claiming U.S. citizenship. The record contains a narrative written on February 27, 1992, by an Immigration Inspector at the Peace Bridge in Buffalo, NY, stating that the applicant claimed he was born in Florida. In addition, the record contains a statement written by a supervisory customs inspector on February 27, 1992, stating that the applicant reasserted to him that he was born in Miami, Florida, and that he was a U.S. citizen. Furthermore, the record contains a written sworn affidavit signed by the applicant on February 28, 1992, stating that he told immigration officials that he was a U.S. citizen. Moreover, the applicant was ordered excluded and deported by an immigration judge based on his false claim to U.S. citizenship. Based on the evidence contained in the record, the AAO finds that, in spite of counsel's assertions to the contrary, the applicant clearly attempted to enter the U.S. by claiming that he was a U.S. citizen in 1992.

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

(i) In general. -- 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.

. . . .

(iii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (i) [of section 212 of the Act.]

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.**

[Emphasis added] Counsel asserts that the INS erred in not taking into account hardship to the applicant's children. However, section 212(i) specifically limits its extreme hardship provisions to the U.S. citizen or legal permanent resident spouse or parents of an applicant. The AAO therefore finds no error in the district director's conclusion that the only qualifying relative in the applicant's case is his spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, (BIA 1999) provided a list of factors that the Board of Immigration Appeals

(BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In the applicant's case, the record contains no evidence of hardship to the applicant's U.S. citizen wife. Although the applicant states in a letter attached to his I-601 application that that he has invested everything he has in the United States and that it would be hard on his wife if he were deported, the applicant provided no further information or evidence regarding the type of hardship his wife would suffer. Counsel's conclusionary assertion that the applicant's family would suffer extreme emotional, psychological and financial hardship if the applicant were removed from the U.S. is equally unsupported by the record.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a 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.