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U.S. Department of Homeland Security
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]

FILE: [REDACTED] Office: ST. LOUIS, MO

Date: **JUL 17 2003**

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

JUL1703_08H2212

DISCUSSION: The waiver application was denied by the District Director, St. Louis, Missouri, 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 January 12, 1999, the applicant procured admission into the United States using a photo-substituted Jamaican passport and visitor visa. The applicant is thus 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), as an alien who gained admission into the country through fraud or willful misrepresentation of a material fact. The applicant married a United States (U.S.) citizen on February 7, 2001, and he is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The district director determined that the applicant had failed to establish extreme hardship to his U.S. citizen wife (Mrs. Howard), and denied the application accordingly.

On appeal, counsel asserts that Mrs. [REDACTED] suffers from bad health and that she would face emotional and physical hardship if she moved to Jamaica with her husband or if her husband were removed from the U.S. and she remained here. Counsel additionally asserts that the district director's decision gave inappropriate negative weight to the applicant's fraudulent entry into the country.

This office finds that the district director referred to the applicant's fraudulent entry only as a ground of inadmissibility and that the decision did not give inappropriate weight to the applicant's fraudulent entry into the country.

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.

Section 212(i) of the Act thus provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, the Bureau of Immigration and Citizenship Services (BCIS) must then assess whether to exercise discretion.

On appeal, counsel refers to the U.S. Supreme Court case, *INS v. Yueh-Shiao Yang*, 519 U.S. 26 (1996), and to the Board of Immigration Appeals (BIA) case, *Matter of Tijam*, 22 I&N Dec, 408 (BIA 1998), to support his claim that the district director gave inappropriate weight to the applicant's fraudulent entry into the United States. Counsel's argument is unpersuasive.

Counsel states that the *Yang* and *Tijam* cases "leave in place. . . and approve the general INS policy of not considering as an adverse factor a single isolated item of entry fraud." See *Memorandum in Support of Appeal* at 7. Counsel fails to note, however, that the courts in *Yang* and *Tijam* found that the applicants were **statutorily eligible** for the relief, which they sought. The adverse factor analysis in both cases, thus, pertained to whether or not **discretion** should be exercised. The analysis did not relate to whether or not the applicants were statutorily eligible for the waiver benefit itself.

In the present case, the district director's decision correctly concluded that the applicant's entry fraud was a ground of inadmissibility and that the applicant was required to obtain a waiver of inadmissibility pursuant to section 212(i) of the Act. Under section 212(i) of the Act the applicant must demonstrate that his qualifying relative would suffer extreme hardship if he were removed from the United States. In this case, the district director determined that the applicant had not established extreme hardship to his wife and that the applicant was thus statutorily ineligible for section 212(i) relief. Because the applicant was found statutorily ineligible for section 212(i) relief, the district director did not balance the adverse and positive discretionary factors of the applicant's case, and he made no inappropriate determination regarding whether discretion should be exercised.

Counsel asserts that the applicant established his wife would suffer extreme hardship if he were removed from the country. *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 include 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, counsel submitted a doctor's letter to support the assertion that Mrs. [REDACTED] would suffer physical and emotional hardship if the applicant were removed from the United States. The November 12, 2002, letter, written by [REDACTED] M.D., FACOG, Advanced OB-GYN Services, states that Mrs. [REDACTED] suffers from sickle-cell trait and high blood pressure, that she has suffered two miscarriages, and that she has been in infertility therapy for several months. The letter implies that due to her past miscarriages, Mrs. [REDACTED] emotional stability is at risk and that her emotional well being, her ability to be employed, and her family and social relationships are all dependent on the successful resolution of her fertility treatments. The letter additionally states that Mrs. [REDACTED] would not be able to get the care she needs in Jamaica.

The conclusions drawn in the November 12, 2002, letter from Dr. [REDACTED] are speculative and general, and the letter lacks probative value. The letter contains no information about Dr. [REDACTED] medical credentials or background and it does not establish that Dr. [REDACTED] is qualified to assess Mrs. [REDACTED] mental or overall physical state. The letter additionally contains no medical diagnoses or reports regarding Mrs. [REDACTED] physical or mental condition, and it contains no information about methods used to reach medical conclusions.

The record additionally contains an undated letter written by the applicant. This letter does not discuss hardship to the applicant's wife, however, and no other information or evidence was submitted to support counsel's assertion that Mrs. [REDACTED] would suffer extreme emotional and physical hardship if the applicant were removed from the United States.

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.