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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: ATLANTA Date: **AUG 07 2006**

IN RE: [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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia, denied the waiver application. The matter 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 Zimbabwe who was found 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). The applicant is the son of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 5, 2004.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because the applicant did not procure a visa by fraud or willful misrepresentation of a material fact. *Applicant's Brief*, dated December 7, 2004. Counsel also contends that the applicant's mother would experience extreme hardship if the applicant were to be removed to Zimbabwe. In support of these assertions, counsel submitted the above-referenced brief and copies of documents previously submitted. The entire record was reviewed and considered in rendering a decision in this case.

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

- (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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Section 212(a)(9) of the Act provides, in pertinent part:

- (C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record in the instant case reflects that, in 1982 or 1983, the applicant entered the United States under his mother's passport. In 1989 the applicant's mother became a lawful permanent resident of the United States. On January 15, 1991, the applicant's mother filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on September 3, 1991. However, an immigrant visa number was not immediately available. On October 27, 1998, the applicant filed a visa application with the U.S. Embassy in Harare, Zimbabwe, while he was in the United States. On October 29, 1998, the applicant was issued a B-1/B-2 nonimmigrant visa. In April 1999, the applicant left the United States and returned to Zimbabwe to visit his sick grandfather. On May 3, 1999, the applicant attempted to apply for admission to the United States at the Philadelphia, Pennsylvania, Port of Entry. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for obtaining a visa by fraud or willful misrepresentation of a material fact, and

section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant alien without a valid immigrant visa. The applicant was permitted to withdraw his application for admission, his B-1/B-2 nonimmigrant visa was revoked for misrepresentation and he was returned to Zimbabwe on May 3, 1999. The record reflects that, on July 10, 1999, the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission. On October 13, 2000, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the approved Form I-130. On May 10, 2001, the applicant's mother became a naturalized U.S. citizen. On April 14, 2004, the applicant filed the Form I-601. On November 1, 2004, the applicant filed documentation to support his claim that his family members would suffer extreme hardship.

The district director based his finding of inadmissibility on the applicant's admission to, and records documenting, his procurement of a visa in 1998 by fraud or by willful misrepresentation of a material fact. Counsel contends that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because he has provided evidence that he was not in Zimbabwe at the time the visa application was made. The applicant's affidavit indicates that he sent two passport photographs to his Aunt who completed and filed the nonimmigrant visa application on his behalf. However, The Record of Sworn Statement in Proceedings (Form I-867A), executed by the applicant on May 3, 1999, indicates that the applicant completed the nonimmigrant visa application himself and signed it before sending it, along with two passport photographs, to his grandfather's secretary who then filed the application with the U.S. Embassy in Harare, Zimbabwe. The Nonimmigrant Visa Application (Form 158) completed and signed by the applicant stated that an immigrant petition had never been filed on his behalf, that he had resided in Bulawayo, Zimbabwe, for the past five years and that, in 1982, he had visited the United States for a period of only two months. Moreover, the Form 158 indicated that he did not have any relatives in the United States, including his mother. Furthermore, in Form I-867A, the applicant admitted that he knew he had not indicated on the Form 158 that he had resided in the United States for the past 15 years. The AAO finds that counsel's contentions in regard to inadmissibility under section 212(a)(6)(C)(i) of the Act are unpersuasive. The applicant completed and signed the Form 158, thereby obtaining a visa, by fraud or willfully misrepresenting a material fact. Additionally, the applicant attempted to obtain admission to the United States by fraud or willfully misrepresenting a material fact in 1999 when he presented a nonimmigrant visa for admission while he was an intending immigrant.

On appeal, counsel contends that the applicant's mother would experience extreme hardship if the applicant were not granted a waiver. However, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April, 1999, the date of his departure from the United States. On May 3, 1999, the applicant attempted to enter the United States without being legally admitted and on July 10, 1999, the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission.

The AAO, therefore, finds that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and is statutorily ineligible for an exception pursuant to section 212(a)(9)(C)(ii) of the Act at this time. The AAO notes that an exception to this ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

The AAO finds that since the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, he must receive permission to reapply for admission (Form I-212). An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that Citizenship and Immigration Services (CIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on May 3, 1999, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

Inasmuch as the applicant is inadmissible and there is no waiver available for inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, until 10 years after his last departure, no purpose would be served in discussing whether the alien is eligible for a waiver pursuant to section 212(i) of the Act. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.