

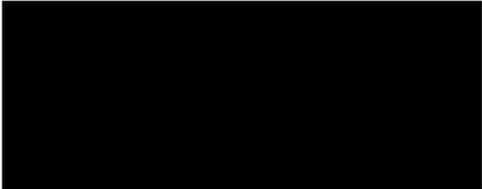


U.S. Citizenship  
and Immigration  
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FILE:



Office: NEWARK, NJ

Date:

MAR 16 2007

IN RE:



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:

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 waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States (U.S.) under 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 admission into the United States by fraud or willful misrepresentation on November 1, 1993. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director noted that the applicant had failed to list a qualifying relative on his waiver application, although the record demonstrated that the applicant is married to a U.S. citizen. He also indicated that the record did not include evidence establishing that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility. The application was denied accordingly. *District Director's Decision*, dated December 13, 2004.

On appeal, the applicant states that he does not think that he should be required to file a Section 212(i) waiver application because he used the fraudulent documents to escape persecution in Haiti. He states that he was allowed to enter the United States to apply for political asylum, which is how he qualified for the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA). *Form I-290B*, dated January 5, 2005.

The record indicates that on November 1, 1993 the applicant presented a photo-substituted French passport bearing the name and birth date of "Raoul Edouard Kauza" in an attempt to gain entry into the United States. The applicant did not admit to immigration officers that this passport was fraudulent until after he was taken to secondary inspection.

With regard to HRIFA adjustment cases, the regulation at 8 C.F.R §245.15 states, in pertinent part, that:

(e) Applicability of grounds of inadmissibility contained in section 212(a).

(1) Certain grounds of inadmissibility inapplicable to HRIFA applicants. Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) Availability of individual waivers. If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter. ... In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure

documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

The applicant asserts that he should not be required to file a Section 212(i) waiver application because he used the fraudulent documents to escape persecution in Haiti. The burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. The AAO notes that the record indicates that the applicant withdrew his asylum application and was never found to be a refugee under the Act. The AAO notes further that the record contains sufficient evidence that the applicant did in fact make a material misrepresentation by presenting the fraudulent passport to U.S. officials in order to procure admission to the United States. It was after this material misrepresentation that he was sent for further inspection, where he admitted his true identity and requested the opportunity to apply for asylum. This case is therefore distinguished from cases in which aliens used fraudulent documents only en route to the United States and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the applicant's case, he revealed his true identity only after having unsuccessfully attempted to procure admission by fraud.

In addition, the language of 8 C.F.R. §245.15 clearly indicates that the grounds for inadmissibility under Section 212(a)(6)(C) of the Act are applicable to HRIFA applicants seeking adjustment of status. Therefore the applicant is subject to Section 212(a)(6)(C) 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.

Section 212(i) of the Act 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. Hardship the alien himself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's U.S. citizen and/or lawful permanent resident spouse and/or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that 8 C.F.R §245.15(e)(2) does state that when considering a section 212(i) waiver application, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption that was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations. This provision of the regulation does not, however, excuse the applicant from his fraudulent representation, but rather once the applicant establishes extreme hardship to a U.S. citizen and/or lawful permanent resident spouse and/or parent, the adjudicator must consider the circumstances in Haiti, when weighing whether the Service should exercise favorable discretion in the applicant's case.

The record contains no assertions or documentation regarding extreme hardship that would be suffered by the applicant's spouse if the applicant's waiver request were denied. Thus, the AAO finds that the applicant has not met his burden of proof in establishing extreme hardship to his spouse as a result of his inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in weighing the discretionary factors in the applicant's case.

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. *See* 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.