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

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 01 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The waiver application is moot and the appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States 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 entry into the United States by fraud or willful misrepresentation. The applicant disclosed on his Application to Register Permanent Residence or Adjust Status (Form I-485) that he used fraud in an effort to gain an immigration benefit in the United States. The applicant has three U.S. citizen children and 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 family.

The director concluded that the applicant does not have a qualifying relative to support his waiver application. The director also stated that any hardship to the applicant or his U.S. citizen children could not be considered in a section 212(i) waiver application. The waiver application was denied accordingly. *Decision of the Director*, dated May 19, 2006.

The AAO notes that the record indicates that the applicant tested positive for the *Human Immune Deficiency Virus* or HIV. Therefore, the applicant is also inadmissible to the United States under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), as an alien who is determined to have a communicable disease of public health significance. This ground of inadmissibility was not addressed by the director in his decision.

On appeal, counsel does not dispute that the applicant does not have a qualifying relative to support his section 212(i) waiver application. He states that the applicant's spouse has a pending adjustment application and that her mother is a lawful permanent resident who would suffer extreme hardship as a result of his inadmissibility. *Counsel's Brief*, dated June 21, 2006. Counsel also notes the applicant's inadmissibility under 212(a)(1)(A)(i) of the Act. He states that the applicant is being treated for his HIV infection through his own private health insurance. *Id.*

The AAO finds that the applicant is not eligible to apply for a Waiver of Grounds of Inadmissibility (Form I-601) because no underlying application exists to support the waiver application. The record indicates that the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as a derivative of his spouse's Form I-485. The applicant's spouse's Form I-485 and Form I-601 were denied on March 10, 2006. Her Form I-601 appeal was dismissed on October 15, 2007. Thus, the applicant's Form I-601 is moot and its adjudication would serve no purpose because the underlying application on which it is dependent, the Form I-485 filed by the applicant's spouse, has been denied. As the applicant's waiver application is moot, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot.