H2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 10 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]

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The record reflects that 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 in 1990. The applicant is married to a U.S. lawful permanent resident and she is the mother of three United States citizen children. She 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 and adjust her status under the Haitian Refugee Immigrant Fairness Act of 1998, Pub. L. 105-277 (HRIFA).

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on her estranged husband. The application was denied accordingly.

On appeal, counsel asserted that, although the applicant and her lawful permanent resident spouse have been separated for many years, the couple entered into the marriage in good faith, as evidenced by the fact that they have two children together. Counsel asserted further that the applicant's children live with her, but that the children would remain in the U.S. with their father if the applicant were removed to Haiti. Counsel asserted that the applicant's estranged husband travels frequently between Haiti and the U.S. for business purposes and that he feels unable to care for the children emotionally and financially. The AAO found that the information and evidence submitted on appeal failed to establish extreme hardship to the applicant's estranged husband. Having found the applicant statutorily ineligible for relief, the AAO found that no purpose would be served in discussing whether the applicant merited a waiver as a matter of discretion.

In the present motion to reopen, the applicant reasserts that her children need her to take care of them and that they cannot move to Haiti because conditions there are unsafe.[1] The applicant additionally asserts that at the time she left her husband, he was physically abusive towards her. The applicant submitted a 1993 police report

[1] It is noted that, although a notice to appear has been filed by counsel, the applicant appears to have filed the present motion to reopen without the help of counsel.

indicating that she was the victim of domestic violence by her estranged husband in November 1993. The applicant also asserts that her 10-year-old son, [redacted], has an "emotional handicap disability" and that her 5-year-old daughter has a heart problem. The applicant submitted no medical evidence or other information to support the assertion that her children suffer emotional or physical health problems. Moreover, although the applicant submitted a November 1993 police report reflecting that she was the victim of domestic violence by her estranged husband (Mr. [redacted] while she was 7 months pregnant, it is unclear how the charge is relevant to Mr. [redacted] extreme hardship claim. No other new evidence was presented to indicate that Mr. [redacted] would suffer extreme hardship if the applicant's waiver were not granted.

The AAO finds that the applicant failed to establish that her children have mental or physical problems that would cause extreme hardship to her estranged husband, and she failed to present any new evidence indicating that her estranged husband would suffer extreme hardship if the applicant's waiver application were not granted. In addition, the applicant failed to identify any legal errors in the prior AAO or district director decisions.

8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider
>
> . . . .
>
> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
>
> . . . .
>
> (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

. . . .

The issues raised in the applicant's motion to reopen were addressed in the June 4, 2002, AAO decision and order, and the applicant failed to establish any error in the AAO or district director's decisions.

It is noted that pursuant to 8 C.F.R. 21 245.16(e)(2), the regulations provide that:

> [I]n 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 above noted special HRIFA case considerations apply only to the discretionary determination aspects of a waiver case. Prior to establishing that an exercise of discretion is warranted, however, the applicant must first establish that a qualifying relative will suffer extreme hardship if the waiver is not granted. Because the applicant failed to establish extreme hardship to her estranged spouse, she is statutorily ineligible for a waiver. Thus no purpose would be served in assessing whether to exercise discretion in this case.

ORDER: The appeal is dismissed and the previous decisions of the District Director and the AAO will be affirmed.