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

H4

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FILE:



Office: MIAMI

Date: AUG 28 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Cuba who was paroled into the United States on December 30, 1997 and applied for adjustment of status on March 22, 2000. In order to remain in the United States with her legal permanent resident (LPR) spouse and LPR mother, the applicant seeks a waiver of inadmissibility 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 sought to procure admission into the United States by fraud or willful misrepresentation.

On December 31, 1996, the applicant attempted to enter the United States with a fraudulently obtained Venezuelan passport. At that time, she asserted that she was a citizen of Venezuela, that she had bought her passport from a man on the street in Caracas, and withdrew her application for admission. She returned to Venezuela on January 1, 1997, without having entered the United States. On December 26, 1997, the applicant was caught at the U.S./Mexico border attempting to enter the United States without inspection and was then paroled into the United States.

On March 22, 2000, the applicant filed a Form I-485 Application to Adjust Status. On September 26, 2003, the director denied the applicant's adjustment application on the basis that she was inadmissible for trying to use the fraudulently obtained Venezuelan passport in 1996. The director concluded that the applicant was ineligible for a waiver of inadmissibility because she did not have either an LPR or U.S. citizen spouse or parent. The director sent its denial of the Form I-485 to the AAO for review. On January 20, 2004, the AAO affirmed the district director's denial of the Form I-485.

On July 27, 2005, the applicant filed a Form I-601 Waiver of Inadmissibility, stating that her husband and mother were now legal permanent residents and that she was eligible to apply for a waiver. On November 10, 2005, the director denied the waiver application because the applicant did not have a pending Form I-485 upon which to base a waiver of inadmissibility. The AAO affirms the director's denial of the Form I-601.

On appeal, the applicant asserts that she filed the requisite Form I-485 in March 2000. That application, however, was denied by the director and the denial was affirmed by the AAO. The applicant must submit a new Form I-485 and a new Form I-601 hardship waiver application to the director, with appropriate fees. 8 C.F.R. 103.2(a)(7)(ii).

In support of the Form I-601 waiver application, the applicant submits copies of her husband's and her mother's green cards. *Spouse's Permanent Resident Card* showing that he was admitted as a permanent resident on December 27, 2003 and *Mother's Permanent Resident Card* showing that she was admitted as a permanent resident on March 30, 2005. This documentation establishes the applicant's prima facie eligibility for an inadmissibility waiver. It does not, however, establish that her qualifying relatives would suffer extreme hardship if she is not admitted to the United States.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals sets forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. Proof of hardship for a waiver of inadmissibility should include objective evidence of the hardship her qualifying relatives would suffer. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.