U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MIAMI, FL Date: SEP 23 2005

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: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter 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 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), for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant 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.

The district director found that based on the evidence in the record, the applicant had failed to establish the requisite relationship for waiver eligibility. The application was denied accordingly. *Decision of the District Director*, dated December 20, 2000.

On appeal, the applicant states that he fled his home country in order to avoid political repression. He states that his family and friends arranged for him to leave Haiti in order to avoid torture and possible death. *Form I-290B*, dated January 14, 2001. The applicant states that he seeks review of his case by an Immigration and Naturalization Service Judge and that he is applying for political asylum as opposed to adjustment of status. *Letter from Bien-Aime Hull*, dated March 18, 2004 (also dated August 19, 2004). The record on appeal contains an Affidavit in Support of Motion to Proceed on Appeal in Form Pauperis, undated.

The record reflects that the applicant attempted to obtain entry into the United States by presenting a photo-substituted passport to immigration officials on August 4, 1993. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. 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 record does not establish that the applicant possesses a spouse or parent who is a lawful permanent resident or citizen of the United States. Therefore, the AAO finds that the applicant has not established a relationship with a qualifying relative as required by section 212(i) of the Act and, based on the record, the applicant is ineligible for a waiver of his inadmissibility to the United States.

The AAO notes that this decision does not constitute an opinion regarding the applicant's claim of political asylum. The appellate jurisdiction of the Associate Commissioner for Examinations (now Director of Citizenship and Immigration Service (CIS)) is specified at 8 CFR § 103.1(f)(3)(iii) and does not provide for review of asylum application decisions.

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.