U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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JUL 2 7 2007

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

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 Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of the Dominican Republic, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the father of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his son.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. Specifically, the Director found that the applicant's United States citizen son was not a qualifying relative. On appeal, the applicant contends that his son would suffer extreme hardship if he were required to return to the Dominican Republic. Counsel contends that the Director's decision was inconsistent, arbitrary, and capricious, as the Director had stated in his denial of the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, that, while waivers for fraud are normally available, the applicant had not demonstrated that a United States citizen or lawful permanent resident spouse or child would suffer extreme hardship upon the applicant's removal from the United States.[1]

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

> (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:

> 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant attempted to enter the United States with a fraudulent passport in 1994. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act),

[1] The Form I-485 was denied by the District Director of the New York District Office, not the Director of the California Service Center.

8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not dispute his inadmissibility. Rather, he is filing for a waiver of his inadmissibility.

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. As noted by counsel, the District Director, New York, misspoke when she stated that the applicant had failed to establish that a United States citizen or lawful permanent resident spouse or child would suffer extreme hardship upon the applicant's removal from the United States. The word "child" should not have appeared, as children are not qualifying relatives for this type of waiver application.

However, while the AAO regrets the Director's misstatment, that misstatement does not change the statute,[2] and the Director's subsequent adjudication of the Form I-601 was correct. The applicant's United States citizen child is not a qualifying relative, and the hardship he would suffer upon the applicant's removal to the Domincan Republic cannot be considered here.

The applicant has failed to establish the existence of a qualifying relative for the purpose of filing a waiver under section 212(a)(6)(C)(i) of the Act. Accordingly, the AAO cannot undertake an analysis as to whether a qualifying relative would experience extreme hardship upon the applicant's removal from the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.

[2] The AAO is without authority to amend or ignore the wording of the statute.