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

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FILE: [redacted] Office: MIAMI Date: MAR 09 2009

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:

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.

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 Acting District Director ("district director"), Miami, Florida. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the district director's decision to deny the application. The applicant filed a motion to reopen the matter before the AAO, and the AAO affirmed its prior decision to dismiss the appeal. The matter is now before the AAO pursuant to a second motion to reopen. The motion will be granted and the matter reexamined. The previous decision of the AAO will be affirmed and the application denied.

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 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 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 her U.S. citizen husband and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 13, 2001. On June 4, 2002, the AAO affirmed this determination on appeal. On February 25, 2003, the AAO affirmed its June 4, 2002 decision upon motion to reopen.

On October 6, 2006, the applicant filed the present motion to reopen the AAO's decision. On motion, the applicant's husband contends that decisions issued by U.S. Citizenship and Immigration Services (USCIS) contain factual errors. *Statement from Applicant's Husband*, dated October 4, 2006. Specifically, the applicant's husband states that the applicant's date of attempted entry was indicated as November 19, 1993, when she in fact attempted to enter on November 29, 1993. *Id.* at 1. He asserts that USCIS indicated that the applicant presented a fraudulent permanent resident card, when she in fact only provided a fraudulent Haitian passport. *Id.* at 2. He states that USCIS noted that the applicant's family would endure hardship should she be removed to Jamaica, when in fact she is a citizen of Haiti. *Id.* The applicant's husband contends that the applicant is experiencing hardship due to her inadmissibility. *Id.* He suggests that he and their family continue to experience hardship due to the uncertainty of the applicant's status in the United States. *Id.*

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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:

> (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.

Upon review, the AAO finds that the applicant has sufficiently stated factual errors in the record to warrant reopening the matter for further consideration.

The applicant's husband states that the applicant's date of attempted entry was indicated as November 19, 1993, when she in fact attempted to enter on November 29, 1993. Upon review of the record, the AAO notes that the August 13, 2001 decision of the district director did state that the applicant entered on November 19, 1993 instead of the correct date of November 29, 1993. However, this discrepancy of 10 days appears to have been a typographical error and has no material bearing on the manner of the applicant's entry using fraud and misrepresentation. Further, the AAO corrected this discrepancy in its subsequent decision on June 4, 2002. Thus, the applicant has not shown that she was prejudiced by the erroneous date in the district director's decision.

The applicant's husband asserts that USCIS indicated that the applicant presented a fraudulent permanent resident card, when she in fact only provided a fraudulent Haitian passport. However, the record contains a fraudulent Haitian passport and fraudulent Form I-551 permanent resident card that the applicant presented upon her attempted entry. Each of the documents contains the alias that the applicant initially claimed upon her attempted entry.

The applicant's husband states that USCIS noted that the applicant's family would endure hardship should she be removed to Jamaica, when in fact she is a citizen of Haiti. The AAO observes the error identified by the applicant's husband, found in the district director's decision of August 13, 2001. The applicant has not shown that this error was material to whether the applicant's husband would experience extreme hardship should she be compelled to depart the United States. It is noted that this error was not repeated in the two subsequent decisions issued by the AAO, thus the applicant was not prejudiced by the error of the district director.

The applicant has not stated new conditions that reflect that her husband would experience extreme hardship should she depart the United States. The AAO acknowledges that family separation or relocation typically involves hardship. However, the applicant has not provided new evidence or explanation that overcomes the AAO's prior finding that she did not show that denial of the present application would result in extreme hardship to her husband. Section 212(i)(1) of the Act.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Based on the foregoing, the previous decision of the AAO will be affirmed.

ORDER: The motion is granted and the matter is reexamined. The previous decision of the AAO is affirmed and the application is denied.