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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



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[REDACTED]

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FILE:

[REDACTED]

Office: NEW YORK, NY

Date:

MAR 01 2011

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Director*, dated September 14, 2007.

On appeal, counsel contends the applicant established the requisite hardship. Specifically, counsel contends the applicant's wife, [REDACTED], will suffer extreme emotional and financial hardship if her husband's waiver application were denied, particularly considering she has a skin condition and the couple has two U.S. citizen children. According to counsel, [REDACTED] would not relocate to Guyana to be with her husband given her medical condition, her fears about the crime there, and her family, including her elderly parents, who live in the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and [REDACTED] indicating they were married on August 27, 1998; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit and a letter from [REDACTED]; a psychological evaluation of the family; a letter from [REDACTED] physician; copies of tax and other financial documents; letters from [REDACTED] mother, father, and sister; a letter from [REDACTED] employer; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Guyana; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

In this case, the record shows, and the applicant concedes, that he attempted to enter the United States on July 26, 1999, using a photo-substituted Trinidadian passport under a different name. *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated July 26, 1999. The applicant was detained by immigration officials and placed in removal proceedings. In February 2001, the applicant's wife filed a Form I-130 on the applicant's behalf, which was approved on July 9, 2004. In October 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), and in September 2007, the applicant filed his waiver application (Form I-601). On September 14, 2007, the applicant's waiver application and adjustment application were denied. He was subsequently removed from the United States on November 3, 2007.

A Form I-601 application is viable when there is a pending adjustment of status application or immigrant visa application. In this case, the applicant's Form I-485 was denied and he has been

removed from the United States. He is no longer eligible to adjust status based on his Form I-485. No purpose would be served in examining the hardship to the applicant's spouse as the applicant no longer has an underlying adjustment application to support the filing of his Form I-601 waiver application. The applicant must now apply for an immigrant visa overseas. At that time, he will be informed of any grounds of inadmissibility and any forms he will need to file.

Based on the foregoing, the applicant's appeal must be dismissed by the AAO as the underlying application is moot.

ORDER: The appeal is dismissed.