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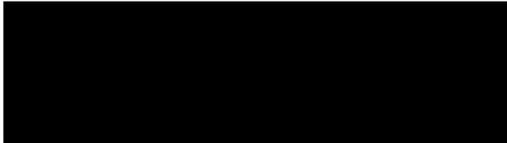
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 2007

IN RE:

Applicant:



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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant [REDACTED] 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 admission into 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). The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver request. *Decision of the District Director*, dated June 19, 2006.

On appeal, the applicant states that according to section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) an alien need not demonstrate admissibility under Paragraphs (4) [Public Charge], (5) [Labor certification], (6)(A) [illegal entrants and immigration violators], (7)(A) [documentation requirements, immigrants], and (9)(B) [aliens previously removed, aliens unlawfully present] of section 212(a) of the Act in order to adjust status.

The AAO will first address the director's finding of inadmissibility under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record reflects that on April 3, 1991 the applicant presented to immigration offices a photo-substituted Haitian passport and nonimmigrant visitor visa bearing the name [REDACTED] in order to gain admission into the United States. She submitted an asylum application in May 1991, which was later denied by an immigration judge. *Decision of the District Director New York City District Office*, dated July 12, 2005.

In *Matter of D-L- & A-M-*, 20 I. & N. Dec. 409, 412 (BIA 1991), the Board of Immigration Appeals (BIA) held that outside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of

the United States Government in an attempt to enter on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent Spanish passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to United States immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act: it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413.

The record reflects that the applicant here arrived in the United States On April 25, 1991. There is no documentation in the record establishing that upon arrival in the United States she surrendered the false passport to United States immigration officials, immediately revealed her true identity, and asked to apply for asylum.

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the Seventh Circuit Court of Appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that "[a]n individual who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact." *Id.* at n.1.

There is substantial evidence to support the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The record reveals that she presented to U.S. immigration officials a fraudulent passport and visitor visa so as to gain admission to the United States, thereby engaging in willful fraud and misrepresentation of material fact.

The AAO will now consider the applicant's assertion that she need not demonstrate admissibility under certain provisions of the Act.

The applicant states that according to section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) an alien need not demonstrate admissibility under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to adjust status.

Certain grounds of inadmissibility are waived under the HRIFA for adjustment of status. *See* 8 C.F.R. § 245.15(e). The applicant's ground of inadmissibility, 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), is not waived at 8 C.F.R. § 245.15(e). Thus, the district director was correct in finding her inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The district director found that a section 212(i) waiver of inadmissibility is not warranted.

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.

The record reflects that the applicant filed a waiver of inadmissibility. 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 to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. 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 Form I-601 in the record indicates that the applicant does not have a qualifying relative as required by section 212(i) of the Act. No evidence in the record establishes that the applicant is the spouse or daughter of a U.S. citizen or an alien lawfully admitted for permanent residence. The district director was therefore correct in finding that a section 212(i) waiver of inadmissibility is not warranted.

Having found the respondent statutorily ineligible for relief, the AAO declines to discuss whether or not she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.