



U.S. Citizenship
and Immigration
Services

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FILE:

Office: BOSTON, MA

Date: MAR 30 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:

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 application for waiver of grounds of inadmissibility was denied by the District Director, Boston, Massachusetts. 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 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 procured admission into the United States by fraud or willful misrepresentation. The applicant attempted entry into the United States on November 22, 1995 using a photo-substituted United States passport. 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 and to adjust her immigration status under the Haitian Refugee Immigrant Fairness Act of 1998, Pub. L. 105-277 (HRIFA).

The district director concluded that the applicant was statutorily ineligible for relief because she failed to establish that she had a qualifying relative for section 212(i) waiver of inadmissibility purposes. The application was denied accordingly.

On appeal the applicant concedes, through counsel, that she did not have a qualifying relative at the time that she applied for a waiver of inadmissibility pursuant to section 212(i) of the Act, and when the district director made a final decision in her case in 2002. The applicant indicates, however, that while her AAO appeal has been pending she married a lawful permanent resident. On this basis, the applicant asserts that she now has a qualifying relative for section 212(i) of the Act purposes, and she requests that her Form I-601, waiver of inadmissibility application be remanded to the district director for submission of an amended waiver application. The applicant does not address or dispute the district director's finding that she is inadmissible pursuant to section 212(a)(6)(C) of the Act.

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 may, in the discretion of the Attorney General, 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 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 was not the spouse or daughter of a U.S. citizen or alien lawfully admitted for permanent residence, when she filed her Form I-601, waiver of inadmissibility application, or when the district director issued a final denial decision in her case.

The regulation provides in pertinent part at 8 C.F.R. § 103.2(b)(1) that:

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. . . .

The regulation provides further at 8 C.F.R. § 103.2(b)(8) that:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. . . .

The AAO finds that a remand of the applicant's case to the district director is unwarranted in the present matter. The regulation clearly reflects that an applicant must establish his or her eligibility for relief at the time that an application for relief is filed. In the present matter the record contained no evidence establishing that the applicant was the spouse or daughter of a U.S. citizen or lawful permanent resident when she filed her Form I-601, waiver of inadmissibility application. The district director therefore correctly determined that the applicant was statutorily ineligible for section 212(i) relief, and her application was properly denied.

The burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the applicant has failed to overcome the grounds for denial in her case. The appeal will therefore be dismissed and the application denied.

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