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U.S. Citizenship  
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[REDACTED]

FILE:

Office: MIAMI, FL

Date: OCT 22 2008

IN RE:

[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.

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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 attempting to procure a U.S. visa by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and is the father of a U.S. citizen child. He is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, at 5, dated December 20, 2005.

On appeal, the applicant states that his application was denied based on a lack of evidence and that he is submitting a well-prepared declaration accompanied by evidence. *Form I-290B*, received January 19, 2006.

The record includes, but is not limited to, the applicant's spouse's statements and physician's statements for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on October 11, 1995 the applicant attempted to procure admission to the United States with a photo-substituted passport and visa. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Haiti and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Haiti. The applicant's spouse states that she has been diagnosed with a seizure problem which is destroying her mentally and physically. *Applicant's Spouse's Updated Statement*, at 1, undated. A letter from the applicant's spouse's physician reports that he has seen her for seizure disorders. *Letter from [REDACTED]* dated January 16, 2006. The record does not reflect whether the applicant's spouse would be able to obtain treatment for her medical problem in Haiti. The applicant and his spouse have a three year-old daughter. *Birth Certificate of [REDACTED]* filed November 4, 2004.

The applicant's spouse also states that the applicant fled persecution in Haiti, his life would be in danger if he returns to Haiti and she would become a target of persecution due to her marriage to him. *Applicant's Spouse's Statement*, undated. The AAO notes that the applicant's application for asylum and withholding of removal was denied by the immigration judge. *Immigration Judge's Decision*, dated January 12, 1998. As such, the applicant's spouse's claim of persecution is not supported by the record. However, the AAO notes the Department of State travel warning for Haiti which advises against travel to Haiti due to political, economic and security concerns. *Department of State Travel Warning, Haiti*, at 1, dated April 30, 2008. Based primarily on this travel warning, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she resided in Haiti permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that her life depends on the applicant, she was diagnosed with a seizure problem which is destroying her mentally and physically, she will not be able to support herself when the symptoms of her illness occur, no one will be available to care for her (doctor's office, hospital and pharmacy trips and other daily needs), and his daughter will also experience extreme hardship without the applicant. *Applicant's Spouse's Updated Statement*, at 1-2. The applicant's spouse's physician states that he has examined the applicant's spouse for severe depression and seizure disorder, and it will be a hardship for the applicant's spouse to care for herself when she experiences a convulsion at home. *Letter from [REDACTED]*. Another physician states he has seen the applicant's spouse in connection to her severe depression, she and the applicant had a long distance relationship for many years prior to their marriage and she could have a nervous breakdown if the applicant is removed. *Letter from [REDACTED]* dated October 28, 2003. The applicant's spouse states that she has known the applicant

since 1992, they have bought a house together, she depends on the applicant's salary to survive, she receives health insurance through the applicant's job and without his salary she will not be able to pay the mortgage. *Applicant's Spouse's Statement*. Based on the totality of these factors, the AAO finds that the applicant's spouse would suffer extreme hardship if she were permanently separated from the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

Adverse factors in the present case are the applicant's misrepresentation, removal order and failure to depart after his dismissed BIA appeal.

The favorable factors include the presence of the lawful permanent resident spouse, U.S. citizen child, lack of a criminal record and extreme hardship to the applicant's spouse.

The AAO finds that the misrepresentation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. In evaluating favorable factors in relation to adverse factors, significant weight is given to extreme hardship based on the nature of the facts leading to a finding of extreme hardship. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.