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

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[REDACTED]

FILE: [REDACTED] OFFICE: MIAMI, FL

Date: APR 08 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:

[REDACTED]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Haiti. The record reveals that in January 1994, the applicant attempted entry to the United States by presenting a passport and Temporary Resident Card belonging to another individual. The applicant 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 having attempted to procure entry into the United States by fraud or willful misrepresentation.¹ The applicant seeks 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 with his U.S. citizen spouse and children, born in 2000 and 2003.

The district director concluded that the applicant had 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 October 26, 2006.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated November 14, 2006; a letter with respect to the applicant's U.S. citizen spouse's medical condition, dated November 6, 2006; and information about country conditions in Haiti. The entire record was reviewed and considered in rendering this decision.

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 immigrant 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...

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The record contains several references to the hardship that the applicant's U.S. citizen children would suffer if the applicant's waiver of inadmissibility is not granted. Section 212(a)(6)(C) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) of the Act does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse further contends that she will suffer emotional, physical and financial hardship if the applicant is removed from the United States. In a declaration she states that she would suffer extreme emotional hardship due to her dependence on the applicant. She would also suffer extreme financial hardship as her salary is not sufficient to cover the family's monthly obligations, including a mortgage, while continuing to properly care for her children. *Letter from* [REDACTED] dated August 31, 2006. Finally, medical documentation has been provided to establish that the applicant's spouse is legally blind due to cataracts in her right eye and needs the applicant's support on a day to day basis. *Letter from* [REDACTED], dated November 6, 2006.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to two young children, without the complete emotional, physical and financial support of the applicant. Moreover, country condition reports indicate that it would be difficult for the applicant to find a job in Haiti with sufficient income to support his spouse and children in the United States, based on the fact that Haiti is the

least developed country in the Western Hemisphere and one of the poorest countries in the world. *See U.S. Department of State Profile-Haiti*, dated October 2008. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to relocate abroad while she remains in the United States. The applicant's spouse needs her husband's emotional, physical and financial support on a day to day basis.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant references and documents the problematic country conditions in Haiti, including the high crime rate, vigilante justice, and the need for armored vehicles and bodyguards due to said crime wave. *See Form I-290B*, dated November 14, 2006. The AAO notes that a travel warning has been issued by the U.S. Department of State, confirming the applicant's statements. The warning states in pertinent part:

The State Department warns U.S. citizens of the risks of travel to Haiti and recommends deferring non-essential travel until further notice. This Travel Warning replaces the Travel Warning dated April 30, 2008, and is being issued to remind American citizens of the destructive impact of a series of hurricanes in 2008, to provide updated information on country conditions, and to alert Americans to ongoing security concerns. Travelers are strongly advised to thoroughly consider the risks before traveling to Haiti and to take adequate precautions to ensure their safety if traveling to Haiti.

During the 2008 hurricane season, four tropical storms struck Haiti, which resulted in torrential rains, extensive flooding and mudslides, and hundreds of reported casualties. The lack of governmental infrastructure and rescue services combined with impassable roads and bridges severely hindered rescue and relief efforts. In late August and September 2008, heavy rains and gale-force winds from hurricanes Fay, Gustav, Hanna, and Ike pelted the country's coastline and interior causing heavy flooding and mudslides. In the aftermath of the storms, eight of the country's nine departments reported significant physical and economic devastation. The storm damage came on the heels of the civil unrest in April 2008. Conditions in Haiti may occasionally limit Embassy assistance to American citizens to emergency services.

In early April 2008, there were violent demonstrations, looting, transportation disruptions, and as many as seven reported deaths in Les Cayes and Port-au-Prince. Some American citizens were temporarily stranded in isolated locations and could not safely travel until calm was restored. The absence of an effective police force in many areas of Haiti

means that, when protests take place, there is potential for looting, the erection of intermittent roadblocks set by armed protestors or by the police, and an increased possibility of random crime, including kidnapping, carjacking, home invasion, armed robbery and assault.

U.S. citizens traveling to and residing in Haiti despite this warning are reminded that there also is a chronic danger of violent crime, especially kidnappings. Most kidnappings are criminal in nature, and the kidnappers make no distinctions of nationality, race, gender, or age. As of January 2009, 25 Americans were reported kidnapped in 2008. Most of the Americans were abducted in Port-au-Prince. Some kidnap victims have been killed, shot, sexually assaulted, or brutally abused. The lack of civil protections in Haiti, as well as the limited capability of local law enforcement to resolve kidnapping cases, further compounds the element of danger surrounding this trend.

Travel is always hazardous within Port-au-Prince. U.S. Embassy personnel are under an Embassy-imposed curfew and must remain in their homes or in U.S. government facilities during the curfew. Some areas are off-limits to Embassy staff after dark, including downtown Port-au-Prince. The Embassy restricts travel by its staff to some areas outside of Port-au-Prince because of the prevailing road and security conditions. This may constrain our ability to provide emergency services to U.S. citizens outside of Port-au-Prince. Demonstrations and violence may occasionally limit Embassy operations to emergency services, even within Port-au-Prince. The UN stabilization force (MINUSTAH) remains fully deployed and is assisting the government of Haiti in providing security.

Travel Warning-Haiti, U.S. Department of State, dated January 28, 2009.

Based on the problematic country conditions in Haiti, as confirmed by the U.S. Department of State, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Haiti to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to relocate abroad, regardless of whether they relocate to Haiti or remain in the United States, the applicant's apparent lack of a criminal record, community ties, property ownership, long-term gainful employment, payment of taxes and the passage of more than fifteen years since the applicant's attempted entry to the United States by fraud and/or willful misrepresentation. The unfavorable factors in this matter are the applicant's initial entry through fraud and periods of unauthorized presence and employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's U.S. citizen spouse as a result of his inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall reopen the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on motion and continue to process the adjustment application.