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Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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invasion of personal privacy

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: FEB 05 2009

IN RE:

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 cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 sustained.

The applicant 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident. She 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 her spouse and children.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated August 2, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding the applicant to be inadmissible and that the applicant had not established extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.<sup>1</sup>

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an expert evaluation by [REDACTED]; statements from the applicant's spouse; a letter from [REDACTED]; statements from the applicant's daughters; employment letters for the applicant and her spouse; bank statements for the applicant and her spouse; published country conditions reports on Haiti; tax statements for the applicant and her spouse; statements from friends; earnings statements and Form W-2s for the applicant and her spouse; and utility, telephone, and medical bills. 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:

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<sup>1</sup> The AAO notes that the Form I-290B indicates that the applicant is appealing the denial of the Form I-485, Application to Register Permanent Resident or Adjust Status. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

- (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 presented an altered passport issued to a [redacted] in an attempt to gain admission to the United States in 1989. *Form G-2, Immigration and Naturalization Service (INS) Memorandum*, dated January 1, 1990; *Record of Sworn Statement*, dated December 31, 1989; *Fraudulent passport*. As such, the Director found the applicant to be inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(A)(ii) of the Act and therefore does not need a waiver, as she was technically paroled into the United States upon entry and therefore qualifies to adjust her status to lawful permanent resident under the Haitian Refugee Immigrant Fairness Act (HRIFA) of 1998. The AAO finds counsel's analysis to be in error. The Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for having used a fraudulent document in an attempt to enter the United States, not under section 212(a)(6)(A)(ii) of the Act for being present in the United States without being admitted or paroled. As previously mentioned, the record shows that the applicant presented a fraudulent passport to an immigration inspector in 1989. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for which she needs a waiver in order to adjust to lawful permanent resident.

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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Hardship to the applicant's children will be considered only to the extent that it affects a qualifying relative. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Haiti or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Haiti, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native and citizen of Haiti. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* According to the record, his father is deceased and his mother resides in Haiti. *Id.* The applicant's spouse has severe, persistent asthma, diabetes mellitus and hypertension. *Statement from [REDACTED]* dated September 18, 2006. He experiences severe asthma symptoms that require constant monitoring of his condition inside and outside of a medical office, especially at night. *Id.* According to his physician, Haiti is medically destitute with a decided lack of infrastructure, essential medicines, ambulances, hospitals and doctors. *Id.* Country conditions support that Haiti is the poorest country in the Western Hemisphere with 80 percent of its population earning less than \$2 a day. "*Protests, violence dampen Haiti's joy*" by [REDACTED], dated December 29, 2003. Life expectancy has fallen from 55 to 49 years in the last decade. *Id.* Getting access to prescriptive medication is a very rare and difficult undertaking relegated mostly to those who can afford it or have government connections. *Statement from [REDACTED]* dated September 18, 2006. Patients must often wait for months before they can receive medication. *Id.* Control of the applicant's spouse's severe persistent asthma through his medication is a matter of life and death. *Id.* He does not have the luxury of months. *Id.* Without proper treatment, persistent asthma gets progressively worse, giving rise to respiratory infections and diseases that can lead to respiratory failure and heart attacks. *Id.* His situation is compounded by hypertension, which worsens under stress, and by diabetes mellitus which limits his diet. *Id.* If he does not have immediate access to his albuterol nebulizer and there is no electrical power, a common occurrence on the island, he could die. *Id.* The AAO also notes that the United States Department of State has issued a Travel Warning to advise American citizens to defer non-essential travel to Haiti until further notice. *Travel Warning – Haiti, United States Department of States, Bureau of Consular Affairs*, dated April 30, 2008. When looking at the aforementioned factors, specifically the significant health condition of the applicant's spouse and the country conditions in Haiti, as documented in the record, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Haiti.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse suffers from severe, persistent asthma, diabetes mellitus and hypertension. *Statement from [REDACTED]* dated September 18, 2006. As noted by his physician, the applicant's

spouse has easy access in the United States to the prescription medication, health, and emergency services he needs to properly treat his disease. *Id.* [REDACTED] also states that a critical component of the spouse's ability to maintain his health is the "nurse" he has in the applicant. *Id.*

According to one of the daughters of the applicant's spouse, when her father suffers one of his frequent asthma attacks, he gasps for air and then begins to cough very violently, often coughing up blood. *Statement by applicant's daughter* [REDACTED], dated September 29, 2006. In this condition, he cannot speak. *Id.* If he were to be alone during one of these attacks, he would not be capable of getting his medicated inhaler if it was out of reach. *Id.* He also would not be able to call 911. *Id.* He could die in a matter of minutes if he does not get his medication on time. *Id.* The applicant's spouse can no longer count on this same daughter in the event of an emergency, as she recently moved to a location an hour's drive away by car and a two-hour train ride. *Id.* The applicant's spouse has two other daughters, both of whom live in Virginia. *Statement from the applicant's spouse, dated September 29, 2006; Statement from the applicant's daughter* [REDACTED] dated September 29, 2006.

The applicant's spouse states that he does not have anyone who could look after him if the applicant were removed. *Statement from the applicant's spouse, dated September 29, 2006.* He does not have health insurance and cannot afford to hire anyone. *Id.* He does not believe that the applicant could ever make enough money in Haiti to assist him. *Id.* According to [REDACTED] an expert on Haiti, approximately two-thirds of Haiti's population is unemployed, making it highly unlikely that the applicant would find any work in Haiti. *Expert Evaluation by* [REDACTED] dated March 8, 2007. Employment in Haiti depends primarily on who you know and personal references. *Id.* The applicant left Haiti over 17 years ago and has no connections to people in Haiti who could lead her to a job or give her references for a job. *Id.* As a result, the applicant would be totally dependent upon her spouse to provide financial support for her housing, food, medical care and other expenses that arise. *Id.* The record documents that both the applicant and her spouse work to pay their expenses. *Tax statements and Forms W-2 for the applicant and her spouse.* In 2003, the applicant earned \$30,825.17 while her spouse earned \$16,640.00; in 2004 the applicant earned \$19,841.52 and her spouse earned \$19,075.00. *Forms W-2.* When looking at the aforementioned factors, specifically the significant health condition of the applicant's spouse, the economic situation and the lack of employment in Haiti as documented in the record, and the lack of family members in the United States who could assist the applicant's spouse in her absence, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

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).*

The adverse factors in the present case are the applicant's prior use of a fraudulent document for which she now seeks a waiver, her failure to comply with an order of exclusion and deportation, and periods of unauthorized presence and employment.

The favorable and mitigating factors are the applicant's lawful permanent resident spouse, her three United States citizen and lawful permanent resident daughters, the extreme hardship to her spouse if she were refused admission, her supportive relationship with her spouse and their children, her payment of taxes, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.