



U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 03 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The director found the applicant, [REDACTED], a native and citizen of Haiti, 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 sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to live in the United States with her alleged mother, a lawful permanent resident of the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated October 13, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility, which is under § 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (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 chapter is inadmissible.

The record reflects that in seeking to procure admission into the United States, the applicant, on October 5, 1992, presented herself to an immigration inspector as a returning temporary resident with a counterfeit I-688 that she purchased for \$3,000 USD; and she presented her son, a native and citizen of Haiti, with a U.S. passport that belonged to someone else for which she paid \$2,000 USD. In light of her material misrepresentations, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel states, in part, that the “extreme hardship” standard is more liberal for applicants applying for benefits under Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) and because the applicant here is applying for benefits under HRIFA, the regulation under 8 C.F.R. § 245.15(e)(2) provides that if the required family relationship is established, and the applicant is otherwise qualified, the waiver should generally be granted. Counsel states that, should it be found that the regular “extreme hardship” standard is appropriate here, the submitted evidence demonstrates extreme hardship to the applicant’s qualifying relative, who is her lawful permanent resident mother.

A waiver is available for inadmissibility under § 212(a)(6)(C) of the Act, which the AAO will now address.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's mother, a permanent resident of the United States. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the denial letter, the director noted that the applicant, in a sworn statement dated October 5, 1992, stated that both of her parents are deceased. The director further stated that the only evidence produced to indicate a relationship with [REDACTED], the applicant's alleged mother, is the applicant's delayed birth certificate issued in 1993.

The AAO notes that the record is inconsistent regarding the applicant's date of birth and whether her mother is deceased. For example, the Record of Sworn Statement, dated October 5, 1992 and signed by the applicant, conveys that the applicant stated that she was born on October 11, 1966, in Port-au-Prince, Haiti. The submitted baptismal certificate, produced on September 13, 1993, reflects that the applicant was born on "11-10-64." The birth certificate by the Ministry of Culture, National Archives of Haiti, produced on September 7, 1993, reflects that the applicant was born at Port-au-Prince on October 11, 1964.

In the Record of Sworn Statement the applicant states that both her parents are deceased, and that her family in the United States is her sister [REDACTED]. Yet, the applicant produced a maternity screening report dated December 13, 2006, which indicates there is a probability of maternity of 99.9996715 percent that [REDACTED] is the biological mother of [REDACTED]. However, the report notes that "Maternity Screening test results cannot be used in a court of law. Samples were not collected in accordance with AABB standards."

The AAO finds that the submitted documentation fails to demonstrate that the applicant is the daughter of [REDACTED], as required by section 212(i) of the Act. The date of birth given by the applicant in the Record of Sworn Statement differs from the date of birth shown in the baptismal and birth certificates. Because the maternity screening report does not convey the standards GenQuest DNA Analysis Laboratory uses in collecting samples, the reliability of the laboratory's DNA testing has not been established and the results of the screening are consequently speculative, diminishing the value, if any, of the maternity screening report in establishing whether the applicant is the daughter of [REDACTED]. The AAO observes that the report states that [REDACTED] not [REDACTED] is the daughter of [REDACTED].

The AAO therefore finds that because the applicant has not demonstrated that she is the spouse or daughter of a United States citizen or an alien lawfully admitted for permanent residence, she is ineligible for a section 212(i) waiver. It is noted that the applicant submitted no evidence to establish that she has any other qualifying relative under the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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. The application will be denied.

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