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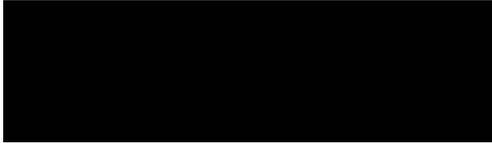
U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: Office: NEW YORK CITY, NY Date: OCT 29 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 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). The director concluded that the applicant was ineligible to apply for a waiver of inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 25, 2007. The applicant submitted a timely appeal.

On appeal, counsel states that the director abused her discretion when she denied the waiver application on the ground that [REDACTED] lacks a qualifying relative. Counsel states that [REDACTED] is applying for benefits under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), which was enacted for humanitarian purposes. Counsel states that the regulation found at 8 C.F.R. § 245.15(e)(2) provides latitude in considering the lawlessness and corruption in Haiti at the time of the applicant's departure from Haiti, and the country conditions present there today. Counsel claims that when considering whether to grant a waiver, the adjudicator failed to consider those factors. Counsel asserts that the director failed to consider the impact of deportation on [REDACTED] and on her three U.S. citizen children. Counsel states that Congress intended HRIFA to be on equal footing with other humanitarian statutes and she submits into the record 150 Cong. Rec. S2548 (2004) (statement of [REDACTED]).

The AAO will first address the finding that [REDACTED] is inadmissible under § 212(a)(6)(C) of the Act. That section 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 on February 18, 1989, [REDACTED] sought admission into the United States at the Miami International Airport using a photo-switched Haitian passport in the name [REDACTED]. In view of the material misrepresentation of her true identity, the AAO finds that the [REDACTED] is inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel claims that 8 C.F.R. § 245.15(e)(2) provides latitude in considering the lawlessness and corruption in Haiti at the time of the applicant's departure from Haiti and that the director erred in failing to consider this in making her determination of whether to grant the section 212(i) waiver.

The regulation at 8 C.F.R. § 245.15(e)(2) provides the following:

*§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).*

(e) *Applicability of grounds of inadmissibility contained in section 212(a)* —(1) *Certain grounds of inadmissibility inapplicable to HRIFA applicants.* Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) *Availability of individual waivers.* If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with §212.7 of this chapter. . . . In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

The regulation at 8 C.F.R. § 245.15(e)(2) indicates that an adjudicator will consider a section 212(i) waiver application “by an otherwise statutorily eligible applicant.” Inadmissibility under section 212(a)(6)(C) of the Act is waivable under section 212(i) of the Act.

Section 212(i) of the Act specifies to whom a section 212(i) waiver is available; it states:

- (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 . . .

A section 212(i) waiver is available to an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence. Section 212(i) of the Act is clear in that refusal of admission must result in extreme hardship to a qualifying relative.

██████████ has not established that she is statutorily eligible for a section 212(i) waiver. No statement made on appeal, and no evidence in the record suggests that ██████████ has a citizen

or lawfully resident spouse or parent. Without a qualifying relative, is not statutorily eligible for a section 212(i) waiver.

Although counsel states that 8 C.F.R. § 245.15(e)(2) provides latitude in considering the lawlessness and corruption in Haiti at the time of the applicant's departure from Haiti, the regulation specifically states that country conditions in Haiti are to be taken into consideration by the adjudicator "when weighing discretionary factors." Thus, the country conditions in Haiti at the time of [REDACTED] departure from Haiti are to be taken into consideration only when weighing discretionary factors, and are not to be considered when determining whether [REDACTED] is statutory eligibility for a section 212(i) waiver.

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.