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



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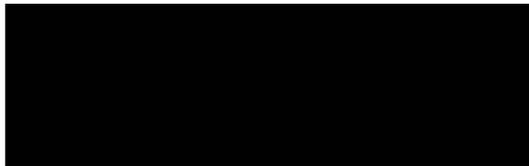
FILE: [REDACTED] Office: CHICAGO, ILLINOIS

Date: SEP 30 2009

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:



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 "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and the relevant waiver application is therefore moot.

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 Act for seeking to procure admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and has applied for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded that the applicant 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. *See Decision of the Field Office Director* dated June 5, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act because he used a fraudulent Haitian passport solely to board a plane and was truthful as to his identity when questioned by immigration officials. *See Brief in Support of Appeal* at 3. Counsel states that USCIS misapplied the law in concluding that the mere possession of a fraudulent passport indicated that he intended to misrepresent his identity. *Brief* at 3. Counsel relies on the decision of the Board of Immigration Appeals (BIA) in *Matter of Y-G-,20* I&N Dec. 794 (BIA 1994), to support the claim that presentation of a fraudulent passport to board an airplane does not render an individual inadmissible because there is no fraud or misrepresentation made to a U.S. government official. *Brief* at 4. Counsel additionally asserts that even if the waiver application were required, USCIS erred in determining that the applicant had not established extreme hardship to his U.S. Citizen wife if he is removed from the United States. *Brief* at 8-13. In support of the appeal, counsel submitted affidavits from the applicant and his wife, tax returns, medical records for the applicant's wife, and information on conditions in Haiti. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act 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 Act is inadmissible.

In the decision denying the waiver application, the field office director states:

Your attorney of record stated that you only presented the fraudulent passport and fraudulent visa because the Immigration Inspector asked for it. The mere fact that

you obtained the fraudulent passport and visa indicates there was an intention to misrepresent yourself. You did not have to present the fraudulent passport and visa. *See Decision of the Field Office Director* dated June 5, 2007.

The record reflects that the applicant was paroled into the United States on January 17, 1994 after being detained upon arrival at Fort Lauderdale, Florida. The applicant states in his affidavit that his aunt obtained a fraudulent Haitian passport and U.S. visa for him under the name [REDACTED] so that he could board a plane to the United States and he could seek asylum. *See Affidavit of [REDACTED]* dated August 2, 2007. He further states that when the plane landed one officer collected the passports of everyone on board without talking to anyone. He states that the passengers from the flight were then "quarantined" and spoken to individually, and when the applicant was first asked his name, he gave his correct name and said he was escaping from Haiti because of political problems. *Affidavit of [REDACTED]*

Documentation on the record, including records prepared at the time the applicant was detained and questioned by immigration officers, is consistent with his account that officers entered the plane while the passengers were still on board and he was not questioned by an immigration officer at that time. The charter company that operated the flight from Haiti was issued a Notice to Detain, Deport, Remove, or Present Aliens (Form I-259) listing the applicant and several other individuals on board the flight. A memorandum from an immigration inspector states that a charter flight from Cap Haitien arrived on January 16, 1994 at Port Everglades and "on board were 30 passengers, all malafide Haitians." The memorandum lists the names of several individuals, including the applicant, and the type of fraudulent document each possessed, but there is no record of sworn statement for the applicant indicating he presented himself for inspection and misrepresented his identity to an immigration officer. The memorandum states that an anti-smuggling unit interviewed some of the passengers concerning the party or parties who arranged for the documents or chartered the flight and then all the subjects were served with a Form I-122 and transported to the Krome Service Processing Center.

The AAO notes that no sworn statement was taken from the applicant until the following day by a different officer at the detention center, and the records prepared by the immigration inspectors at the airport list the passengers on the flight and the documents in their possession, but contain no record of any statements they made. Further, although the applicant appears to have been served Form I-122 on the date of his arrival, the section indicating the charge of excludability is blank, and he was never placed in exclusion proceedings and charged with fraud or misrepresentation, but rather released on parole. There is nothing on the record to establish that the applicant attempted to use the fraudulent passport to gain admission to the United States or ever provided false information to an immigration inspector.

Counsel relies on *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), in which a Haitian national was found not to be excludable under former section 212(a)(19) of the Act because although he possessed a fraudulent passport and visa, there was no evidence that he presented these documents to a U.S. government official, but rather upon arrival in the United States gave his correct name and admitted to the immigration inspector that the documents were fraudulent. It is well established that

fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, *supra*; *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). In *Matter of D-L- & A-M-*, the BIA stated,

[W]e now hold that, outside of the TRWOV [TWOV] context addressed in *Shirdel*, an alien is not excludable under section 212(a)(19) of the Act [now section 212(a)(6)(C)(i) of the amended Act] for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents.

The evidence on the record does not establish that the applicant made any misrepresentation to a government official, but rather presented a fraudulent passport to an airline official in order to board a plane. Based on the record, the AAO finds that the applicant did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. He is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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. Here, the applicant is not required to file the waiver application. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as moot.