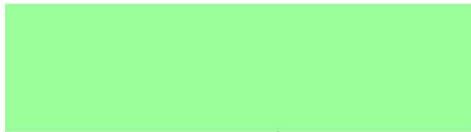




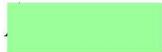
**U.S. Citizenship
and Immigration
Services**

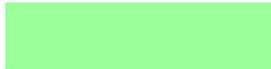
(b)(6)



DATE: **JAN 18 2013**

Office: KINGSTON

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), 212(h) of the Act, 8 U.S.C. § 1182(h), and 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you

for 

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record establishes that the applicant, a native and citizen of Jamaica, attempted to enter the United States in June 1992 using an Affidavit of Citizenship belonging to another person, but withdrew the application for admission and was allowed to depart. On April 29, 1996, he again presented false identification consisting of a Jamaican passport in the name of another person with the applicant's photograph affixed, and remained until May 24, 2010, when he voluntarily departed. The record also reflects that the applicant was arrested on a variety of charges during the decade following his 1996 entry without inspection,¹ on June 17, 2008 an Immigration Judge granted him voluntary departure, and he left the country on May 24, 2010.

The applicant 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 having sought to procure admission by fraud or misrepresentation, section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more, section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude, and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), due to an outstanding removal order activated by noncompliance with a grant of voluntary departure.² The applicant contested several of the inadmissibility findings, but does not pursue these issues on appeal. Rather, noting the field office director found the applicant to have established that his inability to immigrate imposed extreme hardship on his qualifying relative, the applicant contends that the director erred in finding him not entitled to favorable exercise of discretion.

The field office director concluded the applicant had failed to demonstrate that a favorable exercise of discretion was appropriate and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, November 10, 2011.

In support of the appeal, counsel for the applicant submits a brief and supporting documentation, consisting of material previously submitted in support of the waiver request, as well as updated country condition information and a Board of Immigration Appeals (BIA) decision. The entire record was reviewed and considered in rendering this decision.

A waiver of inadmissibility under sections 212(a)(9)(B)(v), 212(h), and 212(i) is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes

¹ The applicant contends that he was admitted in 1996 after inspection of the fraudulent documents he presented. However, as he explained during removal proceedings, having disposed of all such documentation, the applicant was unable to prove to the Immigration Judge he was admitted after inspection.

² Despite some confusion in the record whether the applicant's voluntary departure was timely, we note the Department of Homeland Security (DHS) appealed the grant of voluntary departure and the applicant appealed the denial of his application for adjustment of status to the Board of Immigration Appeals (BIA). As the BIA's March 25, 2010 decision renews the 60-day grant of voluntary departure, and where the record reflects the applicant departed the country timely on May 24, 2010, no alternate order of removal ever took effect. The applicant is thus not inadmissible under section 212(a)(9)(A) of the Act and need not obtain permission to reapply for admission under that provision.

the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

On de novo review, the AAO has no reason to disturb the finding that the applicant has established his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300. In evaluating whether relief is warranted in the exercise of discretion, the BIA stated:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue; the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Jamaica, regardless of whether they accompanied the applicant or remained in the United States; a job letter; and the passage of nearly 16½ years since the applicant's most recent unlawful entry to the United States. The unfavorable factors in this matter are the applicant's two unlawful entries into the United States as an impostor using fraudulent travel documents; false claim to U.S. citizenship; unlawful presence while in the United States; and numerous violations of U.S. law between 1996 and 2005, ranging from receiving

stolen property and negligent discharge of a firearm to driving while intoxicated and possession of fraudulent identification documents.

For these reasons, the field office director concluded the applicant had “consistently displayed [...] disregard [for] and disobedience to the laws of the United States. This consistent display of unscrupulous moral character behavior has undermined a favorable disposition of [the] waiver application. [The applicant] ha[s] presented a pattern and practice of personal conduct that is contrary to community standards of honesty, good morals, and upstanding character.” *Decision*, November 10, 2011. In response, counsel for the applicant points to the grant of voluntary departure as a favorable exercise of discretion that the AAO should apply to the waiver determination at issue.

Other than urging the AAO to follow the Immigration Judge’s favorable exercise of discretion at the conclusion of removal proceedings under section 240B(b) of the Act, the applicant offers no substantive legal argument or evidence explaining why he is entitled to a waiver of his inadmissibilities as a matter of discretion. He has made no showing that we are bound to follow the favorable discretion evinced by the voluntary departure order, nor is the AAO required to do so.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. These violations viewed together with his criminal acts comprise a heavy burden. However, the AAO notes that the applicant complied with the voluntary departure order in 2010, more than 10 years have passed since he was convicted of a crime involving moral turpitude, and more than seven years have elapsed since his last arrest. The passage of time coupled with the extreme hardship to the applicant’s wife and children must be afforded their due weight. Because the AAO finds the applicant has established that the favorable factors in his application outweigh the unfavorable factors, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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 met that burden. Accordingly, this appeal will be sustained.

ORDER: The appeal is sustained and the waiver granted.