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



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

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APR 01 2010

FILE: [REDACTED] Office: MIAMI Date:

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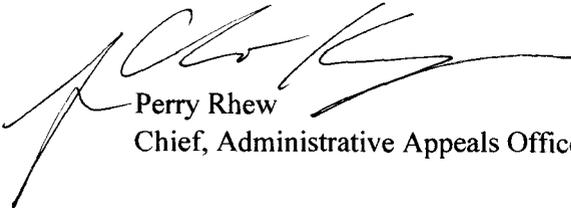
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[REDACTED]

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 her United States citizen husband and lawful permanent resident mother.

The district 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. *Decision of the District Director*, dated August 21, 2007.

On appeal, the applicant's mother and husband assert that they will suffer extreme hardship if the applicant is compelled to depart the United States. *Statements from the Applicant's Mother and Husband*, dated October 3 and 9, 2007.

The record contains, in pertinent part, statements from the applicant's mother and husband; a copy of the applicant's mother's permanent resident card; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate; a copy of the applicant's birth certificate; documentation in connection with the applicant's proceedings in Immigration Court, and; documentation relating to the applicant's attempted entry to the United States using the passport of another individual. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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, in pertinent part, that:

- (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 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 [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 on September 10, 2004 the applicant attempted to enter the United States using a passport that belonged to another individual with her photograph substituted for that of the true owner. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i)

of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

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. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband and mother. Once 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 to a qualifying relative. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

Upon review, the AAO finds that the applicant's mother and husband will experience extreme hardship should the present application for a waiver be denied. The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. As a result, Haitians in the United States are unable to return safely to their country. Even prior to the current catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a travel warning issued on January 28, 2009 the U.S. Department of State noted the extensive damage to the country after four hurricanes struck in August and September 2008 and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State, Travel Warning – Haiti*, January 28, 2009. Based on the designation of TPS for Haitians and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that requiring the applicant's mother or husband to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant's mother or husband would also experience extreme hardship were they to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's mother or husband will experience due to

concern about the applicant's well-being and safety in Haiti, a concern that is beyond the common results of removal or inadmissibility.

Based on the foregoing, the applicant has established that denial of the present waiver application "would result in extreme hardship" to her mother and husband, as required for a waiver under section 212(i)(1) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant attempted to enter the United States through fraud and misrepresentation.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted of a crime; the applicant's U.S. citizen mother and husband would experience extreme hardship if she is prohibited from residing in the United States, and; the applicant would endure significant hardship should she return to Haiti.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burdens of proof and persuasion rest entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met her burden and established that she is eligible for a waiver and she merits approval of her application.

ORDER: The appeal is sustained.