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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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[Redacted]

Office: MIAMI, FLORIDA

Date:

FEB 03 2010

IN RE:

[Redacted]

APPLICATION:

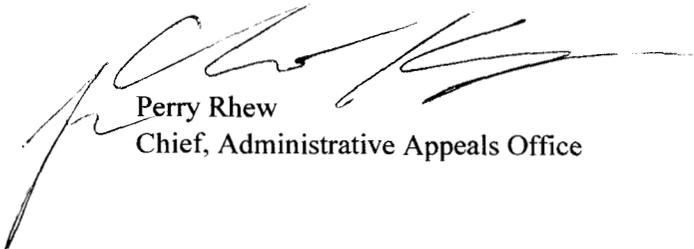
Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted, the prior decision of the AAO will be withdrawn and the appeal will be sustained.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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

According to the regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's submission does not meet the requirements of a motion to reconsider. Counsel cites no precedent decisions establishing that the AAO's prior decision incorrectly applied pertinent law or policy based on the evidence of record at the time. Accordingly, the motion to reconsider is dismissed.

The applicant's motion to reopen, however, will be granted. Counsel asks the AAO to reopen its previous decision of December 24, 2008 and submits additional evidence including, among other documents, a letter from the applicant's husband's physician which states that the "technology and infrastructure" required for the applicant to monitor and treat his "poorly controlled malignant hypertension" is unavailable in Haiti. *Letter from [REDACTED]*, dated January 21, 2009.

In addition to the new evidence submitted on motion, the AAO takes notice of recent events in Haiti. The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has issued an 18-month designation of Temporary Protected Status (TPS) for Haiti because of the devastating earthquake 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 Haiti 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 husband, [REDACTED] to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that [REDACTED] would also experience extreme hardship were he to remain in the United States without the applicant. This finding is based on the extreme emotional harm [REDACTED] 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. Accordingly, the motion to reopen will be granted.

Extreme hardship, once established, does not create an entitlement to a waiver of inadmissibility, but is one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996). 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*, 22 I&N Dec. 560, 566 (BIA 1999). In this case, the applicant merits a favorable exercise of discretion. The negative factors of the applicant's violations of immigration law, while not condoned, are outweighed by the positive factors including, but not limited to, the extreme hardship her husband would face if he relocated with the applicant or she returned to Haiti alone.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her waiver request. Accordingly, the motion to reopen will be granted, the prior decision of the AAO will be withdrawn and the appeal will be sustained.

ORDER: The motion to reopen is granted. The December 24, 2008 decision of the Administrative Appeals Office is withdrawn and the appeal is sustained.