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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:



Office: MEXICO CITY, MEXICO
(PORT-AU-PRINCE, HAITI)

Date **MAY 01 2010**

IN RE:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his mother.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 18, 2008.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's mother; medical letters for the applicant's mother; a statement from the applicant's sister; and medical articles. The entire record was reviewed and considered in rendering this decision.

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

- (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.

Section 212(i) of the Act provides 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 alien 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 in 2004, the applicant sought to benefit from a fraudulent Form I-130 petition, applying for an immigrant visa using an alias and a false date of birth. *Consular Memorandum, Embassy of the United States of America, Port-au-Prince, Haiti*, dated April 4, 2008. The applicant was refused a visa and the Form I-130 was subsequently revoked by USCIS. *Id.*; *Letter of Revocation*, dated August 20, 2007. In 2007, the applicant appeared at a consular interview based on a petition filed by his mother. *Id.* At that time, he failed to disclose his prior application and refusal. *Id.* As such, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact.

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. The plain language of the statute indicates that hardship that the applicant would experience if his waiver request is denied is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's mother if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's mother must be established whether she resides in Haiti or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's mother joins the applicant in Haiti, the applicant needs to establish that his mother will suffer extreme hardship. 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 will affect the country and people of Haiti for years to come, the AAO finds that requiring the applicant's spouse to join the applicant in Haiti would result in extreme hardship.

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

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentations for which he now seeks a waiver.

The favorable and mitigating factors are the applicant's lawful permanent resident mother, his United States citizen sister, the extreme hardship to the applicant's mother that would result from his inadmissibility, his mother's documented health problems, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.