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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

H5

FILE: [REDACTED] Office: ST. ALBANS Date:

SEP 10 2010

IN RE: Applicant: [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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Albans, Vermont, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further proceedings consistent with this decision.

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 procuring admission into the United States by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director noted that the applicant's wife filed for divorce on December 29, 2008, and concluded that the applicant failed to show that denial of the waiver application would result in extreme hardship to his wife. *Decision of the Field Office Director*, dated April 27, 2009. Thus, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.* at 1-2.

On appeal, the applicant asserts that he did not commit fraud or misrepresentation upon entry to the United States, as he entered with a valid B-1/B-2 nonimmigrant visa that was lawfully issued to him. *Statement from the Applicant*, dated May 22, 2009. He states that he and his wife have not resided together since December 2007 due to irreconcilable differences. *Id.* at 1.

The record contains, in pertinent part, statements from the applicant and his wife; a record from the State of Connecticut, Judicial Branch, that indicates that the applicant's wife filed for divorce on December 29, 2008; a copy of the applicant's B-1/B-2 nonimmigrant visa, and; a copy of the applicant's birth certificate. 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 field office director stated that on or about July 4, 1998, the applicant entered the United States using the passport of an individual named Joseph Marcelles with his own photograph substituted for that of the true owner. Based on this finding, the field office director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation.

On appeal, the applicant states that he did not enter the United States by fraud or misrepresentation. *Statement from the Applicant* at 1. He explains that he entered the United States using a valid B-1/B-2 nonimmigrant visa that was lawfully issued to him under his name, [REDACTED]. *Id.* He provides that his proficiency with the English language was limited at the time of his interview, and that when he was asked where he obtained his passport, he stated that [REDACTED] gave it to him. *Id.* He clarifies that [REDACTED] works for the "Haitian passport office" and that he guided the applicant through the application process. *Id.*

Upon review, the applicant's assertions on appeal are supported by the record. The applicant was issued a B-1/B-2 nonimmigrant visa at the U.S. Embassy in Port Au Prince, Haiti on July 1, 1998, three days prior to his entry. The applicant has established by a preponderance of the evidence that he entered using this lawfully issued visa, and that he did not commit fraud or misrepresentation. Accordingly, he is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act.

However, the record reflects that on or about November 30, 2009 the applicant was arrested in Florida for "Larceny – Grand Theft" pursuant to Florida Statutes section 812.014(2)(c)1, which is classified as a third degree felony. The applicant has not provided complete records of this charge such that the AAO can determine whether he was convicted. If he was convicted, he may be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. If he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, he requires a waiver under section 212(h) of the Act.

Irrespective of whether the applicant is inadmissible to the United States, the record supports that the Form I-130 petition filed by his wife on his behalf should be revoked. The record shows that the applicant and his wife do not reside together as a married couple, and that his wife filed for divorce on December 29, 2008. State of Connecticut judicial records show that the applicant's marriage was dissolved on August 27, 2009. Since the applicant's and his wife's husband-wife relationship has been legally terminated, the Form I-130 petition should be automatically revoked pursuant to 8 C.F.R. § 205.1(a)(3)(i)(D).

The Form I-130 petition on behalf of the applicant serves as the basis for the present Form I-601 application for a waiver. Should the AAO make a determination that the applicant is to be granted a waiver of inadmissibility only to have the approved Form I-130 petition subsequently revoked, the waiver would have no effect.

Therefore, the AAO remands the matter to the field office director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approval of the Form I-130 be revoked, the field office director shall issue a new decision dismissing the applicant's Form I-601 application as moot. In the alternative, should it be determined that the Form I-130 petition is not to be revoked,

the field office director shall request additional documentation from the applicant to determine if he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. If the applicant is found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, the field office director shall issue a new decision addressing the merits of the applicant's Form I-601 waiver application in light of the requirements of section 212(h) of the Act. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.