

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: **MAR 01 2013**

Office: BALTIMORE, MD

FILE: [REDACTED]

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.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Haiti who 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

The AAO determined that the applicant established extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i). *Notice of Intent to Dismiss*, dated November 24, 2010. In addition, the AAO stated that the applicant had not demonstrated that he is not inadmissible under section 212(a)(2)(C) of the Act for drug trafficking.

On motion to reopen, the applicant contends that he has only one drug offense, which was dismissed in April 1988 and the record of conviction sealed. The applicant asserts that even though the AAO states that his rap sheet reflects two drug offenses, the New York Police Department and the Federal Bureau of Investigation do not have an arrest record for him. The applicant contends that the letter from the assistant clerk of the New York City Criminal Court, Kings County, verifies that the two charges against him were consolidated and reduced before being dismissed. The applicant argues that his waiver application should be approved.

A motion to reopen must state new facts. *See* 8 C.F.R. § 103.5(a)(2). The applicant has stated new facts and submitted a new statement from the assistant clerk of the New York City Criminal Court, Kings County regarding his record of conviction, and information from his docket. The AAO will, therefore, grant the motion and for the reasons set forth in this decision, approve the waiver application.

In the letter dated March 25, 2011, the assistant court clerk with the Brooklyn Criminal Division of the Criminal Court of the City of New York indicates that the applicant was arrested on September 1, 1987, and charged with violation of New York Penal Law § 220.09, a class C felony. The clerk stated that at the court appearance on September 10, 1987, the offense was reduced to violation of New York Penal Law § 220.03, a class A misdemeanor, and after several court appearances dismissed on April 22, 1988. The docket reflects that applicant was charged with violation of Penal Law § 220.09 (criminal possession of a controlled substance in the fourth degree), and the charge was reduced to violation of New York Penal Law § 220.03 (criminal possession of a controlled substance in the seventh degree), and dismissed. In light of this evidence, the applicant has established he is not inadmissible under section 212(a)(2)(C) of the Act.

As noted in our prior decision, the applicant has established extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board of Immigration Appeals (Board) stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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 AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's inadmissibility for misrepresentation as well as any unauthorized employment and unauthorized presence in the United States. The favorable factors in the present case are extreme hardship to the applicant's family if the waiver is denied, and the affidavit and letters by family members commending the applicant's character as a father, husband, brother, and uncle. The record reflects that the applicant has family ties in the United States in the form of three U.S. citizen sisters. He also has property ties in the United States as he and his wife have bought a house. We acknowledge that the immigration violation committed by the applicant is serious in nature. However, when we consider and weigh the favorable factors in the present case together, they outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the waiver will be approved.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. The waiver application will be approved.

ORDER: The motion is granted, and the waiver application is approved.