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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: **MAY 21 2013**

Office: OAKLAND PARK, FL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Oakland Park, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Jamaica 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 having sought to procure a U.S. passport through fraud or misrepresentation. The applicant is the widow of a U.S. citizen and is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). The applicant is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen child.

The field office director concluded the applicant had failed to establish the existence of a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director, October 25, 2011.*

On appeal, the applicant contends the field office director erred by not finding her entitled to relief as a VAWA self-petitioner and in finding she lacked a qualifying relative under the Act. In support of the appeal, the applicant submits documents including an Approval Notice (Form I-797) regarding her Form I-360 self-petition, a copy of page four of the Form I-601 Instructions, and several statements. The record also contains documents regarding her 1988 conviction for making a false claim to U.S. citizenship. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 *or, in the case of a VAWA self-petitioner*, the alien demonstrates extreme hardship to the alien's United States citizen, lawful permanent resident, or qualified alien parent or child. [emphasis added]

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes only the U.S. citizen or lawfully resident spouse or parent of the applicant, unless the applicant is a VAWA self-petitioner.

Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative.

The record reflects that the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a U.S. passport in 1988 by falsely claiming to be a U.S. citizen and presenting a fraudulent U.S. birth certificate. The applicant was convicted of False Statement in Application and Use of Passport, 18 U.S.C. § 1542, on May 31, 1988. The field office director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

The record further indicates that the applicant was the beneficiary of an approved spousal Petition for Alien Relative (Form I-130), that her husband died on November 1, 2004, and that she filed a Form I-360 on February 24, 2006. The record establishes that the applicant filed the Form I-360 as the widow of a U.S. citizen and not as a self-petitioner under VAWA.

With respect to the applicant's spouse's death in November 2004 and its impact on the applicant's Form I-601, section 204(l) of the Act, which became effective on October 28, 2009 (before the waiver application was adjudicated), states:

(1) In general.- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) Alien described.- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was--

(A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));

(B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);

(C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));

(D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;

(E) an alien admitted in 'T' nonimmigrant status as described in section 101(a)(15)(T)(ii) or in 'U' nonimmigrant status as described in section 01(a)(15)(U)(ii); or

(F) an asylee (as described in section 208(b)(3)).

The applicant qualifies for relief under section 204(l) of the Act, as the record indicates that she was residing in the United States when her husband died, she continues to reside in the United States at this time, and she is the beneficiary of an approved family-based visa petition.<sup>1</sup> To implement section 204(l) of the Act, USCIS issued a policy memorandum on December 16, 2010 adding Chapter 10.21 to the Adjudicator's Field Manual (AFM). *See Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act*, USCIS Policy Memorandum, December 16, 2010. Pursuant to AFM Chapter 10.21(c)(5), the fact that the qualifying relative has died will be "deemed to be the functional equivalent of a finding of extreme hardship...." Consequently, the applicant is eligible to obtain a waiver based on extreme hardship to her spouse, the petitioner of the Form I-130 on behalf of the applicant, who is now deceased.

As the fact that the qualifying relative has died will be "deemed to be the functional equivalent of a finding of extreme hardship," the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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).

In evaluating whether . . . 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

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<sup>1</sup> In the appeal before us, we note the applicant was the beneficiary of her husband's approved Form I-130 petition and is also the beneficiary of the Form I-360 petition she herself filed in 2006.

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).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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 favorable factors in this matter are the hardships the applicant and her U.S. citizen child would face if the applicant were to reside in Jamaica, regardless of whether she accompanied the applicant or remained in the United States, community ties, support letters, gainful employment, and the passage of more than 25 years since the applicant's only criminal activity, resulting in a conviction for making a false statement in applying for a passport. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation, as outlined in detail above.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.