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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**

FILE: [REDACTED] Office: PORT AU PRINCE, HAITI

Date: **AUG 26 2010**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Office in Charge (OIC), Port au Prince, Haiti. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is the mother of four U.S. citizen children and she seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated November 23, 2007, the OIC found that the applicant did not have a qualifying relationship to a U.S. citizen or lawful permanent resident parent and/or spouse in order to qualify for a section 212(a)(9)(B)(v) waiver. The application was denied accordingly.

In a statement on appeal, dated January 1, 2008, the applicant's son states that his mother left behind her husband and three elementary school-aged children in the United States when she departed for Haiti. He states that he is in the U.S. Army and stationed in Korea. He also states that his siblings cannot help with the children and that he fears for their welfare.

Before the AAO can determine whether extreme hardship would be imposed on a qualifying relative, it must first determine whether a qualifying relationship exists and as a consequence if the applicant is eligible to apply for a section 212(a)(9)(B)(v) waiver of inadmissibility.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or

daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant does not have a qualifying relative as she is not the spouse or child of a U.S. citizen and/or lawful permanent resident. Her U.S. citizen children are not qualifying relatives. Therefore, the applicant is statutorily ineligible to apply for a waiver of inadmissibility because she lacks a qualifying relationship with a U.S. citizen or lawful permanent resident.

A review of the documentation in the record fails to establish the existence of a qualifying relationship with a U.S. citizen and/or lawful permanent resident. The applicant is therefore statutorily ineligible for a section 212(i) waiver of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.