

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



H6

DATE: **AUG 25 2011** OFFICE: VIENNA

FILE: [REDACTED]

IN RE: [REDACTED]

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

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 \$630. 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,

Handwritten signature of Perry Rhew in black ink.

Perry Rhew
Chief, Administrative Appeals Office

The waiver application was denied by the Officer-in-Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania who attempted to enter the United States, pursuant to the Visa Waiver Program, by presenting a fraudulent Slovenian passport on April 19, 2001. The applicant 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 to procure admission to the United States through fraudulent or willful misrepresentation. The applicant was ordered removed from the United States by an immigration judge on February 11, 2002, and was subsequently removed on November 6, 2007. The applicant was further found to be inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii)(I) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(ii)(I) and (a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and for having been ordered removed and seeing readmission within ten years of his removal from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Officer-in-Charge concluded that the applicant was statutorily ineligible for the requested waivers, and that record failed to establish the existence of extreme hardship for the applicant's spouse, and denied the application accordingly. *See Decision of the Officer-in-Charge*, dated April 22, 2009.

On appeal, the applicant's spouse claims that her husband's asylum application was not frivolous in nature and asserts that the applicant suffered due to the ineffective assistance of counsel throughout his immigration proceedings.

Section 208(d)(6) of the Act provides in pertinent part:

(d) Asylum Procedure. –

....

(6) Frivolous applications. - If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The record reflects that on February 11, 2002, an immigration judge denied the applicant's request for asylum, withholding of removal, and protection under the Convention Against Torture, and determined that he had knowingly submitted a frivolous application for asylum. The Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on October 23, 2003. On May 24, 2007, the BIA denied the applicant's motion to reopen after considering and rejecting the applicant's claims of ineffective assistance of counsel and changed country conditions.

The applicant seeks a waiver of inadmissibility after having sought to procure the benefit of asylum through fraud. The applicant is permanently ineligible for any benefit under the Act because he was determined by an immigration judge to have knowingly made a frivolous application for asylum. The applicant is therefore statutorily ineligible for a waiver of inadmissibility under section 212(i) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established that denial of the waiver would result in extreme hardship to a qualifying relative or whether the applicant merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.