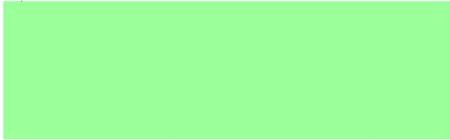




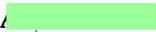
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 14 2013**

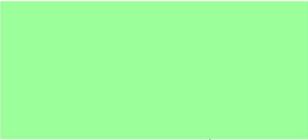
Office: NEWARK, NJ

FILE: 

IN RE: 

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his spouse and children.

The director also found the applicant inadmissible pursuant to 212(a)(6)(C)(ii)(I) of the Act for falsely representing himself to be a U.S. citizen in attempt to procure admission to the United States. The director concluded that the applicant is not eligible for a waiver as a matter of law, as there is no provision under the Act that provides for a waiver of section 212(a)(6)(C)(ii)(I). *See Decision of the Field Office Director*, dated April 20, 2012.

On appeal, counsel asserts that the applicant lacked the intent to falsely claim U.S. citizenship, because he did not know that the fraudulent passport he presented to U.S. inspectors in Miami was a U.S. passport. Counsel further asserts that because the applicant subsequently was paroled into the United States in 2011, his 2001 entry during which he presented a false U.S. passport "cannot be used against him." *See Form I-290B, Notice of Appeal or Motion*, dated May 11, 2012.

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

(ii) Falsely claiming citizenship. -

- (I) In General – Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . or any other Federal or State law is inadmissible.
- (II) Exception – In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(b)(6)

The record reflects that on June 10, 2001, the applicant sought admission into the United States using a U.S. passport with an assumed name. Upon further inquiry during his secondary inspection, the applicant stated his true name and indicated that he paid \$2,000 for the fraudulent passport.

On appeal, counsel asserts that the applicant was not aware that the passport he presented was a U.S. passport. However, counsel provides no corroborating evidence for his assertion. Without documentary evidence the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO finds counsel's assertions alone insufficient to overcome the evidence in the record indicating the applicant's conscious attempt to use a fraudulent U.S. passport to enter the United States. Counsel further asserts that because the applicant was paroled into the United States in 2011, his 2001 entry during which he presented a false U.S. passport "cannot be used against him." The AAO finds counsel's argument unpersuasive, as he provides no legal authority in support of his assertion.

Furthermore, the applicant does not claim and no evidence in the record indicates that the applicant is admissible under the exception described at section 212(a)(6)(C)(ii)II of the Act.

The applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, and no waiver is available. The AAO therefore will not address the applicant's inadmissibility under section 212(a)(9)(B) of the Act in this decision, because no purpose would be served, given his inadmissibility under section 212(a)(6)(C)(ii)(I). Because the applicant is statutorily inadmissible, the appeal is dismissed.

ORDER: The appeal is dismissed.