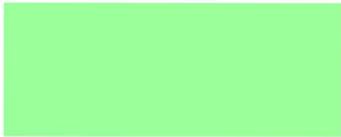


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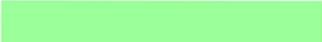


U.S. Citizenship
and Immigration
Services



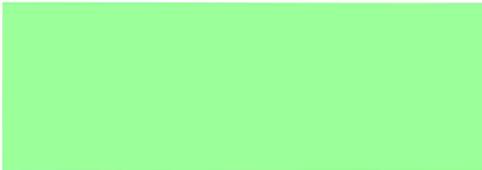
Date: **AUG 23 2013** Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application to Register Permanent Residence or Adjust Status under section 209 of the Immigration and Nationality Act, 8 U.S.C. § 1159.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-602, Application by Refugee for Grounds of Inadmissibility. Upon denying the applications, the director certified the matter to the Administrative Appeals Office (AAO) pursuant to 8 C.F.R. 103.4(a). The director's decision will be withdrawn, and the applications for a waiver of inadmissibility and adjustment of status will be approved.

The applicant is a native and citizen of Cameroon who has resided in the United States since August 12, 1990, when she was admitted in F-1 status. The applicant was granted asylum status on September 8, 1997. She subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status under section 209 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1159 (Form I-485) and Form I-602, Application by Refugee for Grounds of Inadmissibility (Form I-602). The director found the applicant to be inadmissible under 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 attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 209(c) of the Act, 8 U.S.C. § 1159(c), in order to adjust status and remain in the United States with her U.S. citizen children.

The director found the applicant failed to demonstrate a qualifying relative would experience exceptional and extremely unusual hardship as stated in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002) and denied the Form I-485 and Form I-602 applications accordingly. See *Decision of Director* dated October 12, 2012. The director certified the matter to the AAO stating that the applicant's matter presented a novel issue, that of a discretionary denial of a waiver of marriage fraud for refugee adjustment. *Id.*

On certification, counsel for the applicant submits a brief in support. Therein, counsel asserts the director erroneously used the standard for waivers set forth in section 212(i) of the Act and in *In Re Jean*, 23 I&N Dec. 373 (A.G. 2002), to evaluate the applicant's Form I-602. Counsel contends the correct standard for the applicant, who is applying for adjustment of status as an asylee under section 209 of the Act, is found in section 209(c) of the Act. Counsel lastly states the applicant has met the requirements for a waiver under section 209(c) of the Act, as the criteria for a waiver of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act is for humanitarian purposes, to assure family unity, or is in the public interest.

The record includes, but is not limited to, statements from the applicant, her friends, and family members, evidence of birth, marriage, divorce, residence, and citizenship, financial and medical documents, evidence of business ownership, documentation of immigration proceedings, police reports, other applications and petitions, briefs in support, and photographs. The entire record was reviewed and considered in rendering a decision on the certification.

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

- (i) 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.

The record reflects that the applicant married [REDACTED] on March 3, 1994. [REDACTED] filed a Form I-130, Petition for Alien Relative, on June 9, 1994. After issuance of a Notice of Intent to Deny, the Director of the Houston, Texas District Office denied the Form I-130, finding that the marriage was fraudulent, and that the applicant married the I-130 Petitioner solely for immigration benefits. *See I-130 decision*, March 28, 1996. The applicant appealed the District Director's decision, and the Board of Immigration Appeals (BIA) affirmed the finding of marriage fraud and dismissed the appeal. *See BIA decision*, August 13, 1997. Inadmissibility under section 212(a)(6)(C) of the Act is not contested on certification. The AAO therefore affirms that the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for attempting to procure a benefit under the Act, namely, classification as an immediate relative of a U.S. citizen, through fraud or misrepresentation.

Section 209 of the Act provides, states in pertinent part:

(b) The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

- (1) applies for such adjustment,
- (2) has been physically present in the United States for at least one year after being granted asylum,
- (3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,
- (4) is not firmly resettled in any foreign country, and
- (5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

On December 30, 1996 the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. The application was referred to an immigration judge, who granted the applicant's request for asylum on September 8, 1997. The applicant subsequently filed a Form I-485, based on her asylum status, as well as a Form I-602 waiver application. Both applications were denied. In June 2012, the applicant filed a second set of Form I-485 and Form I-602 applications.

The director denied both applications, and certified the matter to the AAO for review. In the decision, the director correctly found the applicant was not barred by section 204(c) of the Act, 8 U.S.C. §1154(c).

Section 204(c) of the Act provides that:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

As the director noted, section 204(c) of the Act relates to the approval of petitions. There is no petition related to adjustment of status under section 209(c) of the Act, therefore, the applicant is not subject to the provisions of section 204(c) of the Act. However, the director erroneously applied the waiver standards found in sections 212(i) of the Act and in *In re Jean*, 23 I&N Dec. 373 (A.G. 2002), concluding the applicant did not meet the elevated standards set forth therein.

As stated above, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a benefit under the Act through fraud or misrepresentation. Nevertheless, the director's reliance on *In re Jean* is misplaced. In that case, the applicant had been found guilty of second degree manslaughter after beating and shaking a 19-month old child in her care, who died as result of bleeding and swelling inside his skull. *In re Jean* at 375. The appellant was found to have been convicted of a crime involving moral turpitude, and was consequently inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The Attorney General reversed the BIA's grant of lawful permanent residency, finding the Board failed to balance the hardship to the appellant's family against the gravity of her criminal offense. *Id.* at 383. The Attorney General further noted,

It would not be a prudent exercise of the discretion afforded to me by this provision to grant favorable adjustments of status *to violent or dangerous individuals* except in extraordinary circumstances, such as those involving national security or foreign policy considerations, *or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship*. Moreover, depending on the gravity of the alien's underlying criminal offense, such a showing might still be insufficient...

In re Jean at 383 (emphasis added). In that case, the Attorney General held that in evaluating the grant of a discretionary waiver to permit adjustment of status from refugee to lawful permanent resident, any humanitarian, family unity preservation or public interest considerations must be balanced against the seriousness of the criminal offense that rendered the alien inadmissible. The Attorney General further found that aliens who committed violent or dangerous crimes will not be granted a discretionary waiver except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or where the denial would result in exceptional and extremely unusual hardship. The Attorney General does not indicate, as the director suggests, that exceptional or extremely unusual hardship must be shown in cases where an alien is not a violent or dangerous individual. Nor does USCIS policy require such a finding. See *Memorandum on Waivers Under section 209(c) of the Act by Michael Aytes, Acting Director of Domestic Operations*, October 31, 2005.

Based on the present record, the AAO notes the applicant has not been convicted of any crime, nor is there any indication that she is a violent or dangerous individual. The AAO therefore declines to apply the exceptional and extremely unusual hardship standard as delineated by the Attorney General in *In re Jean* in the present case.

The applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act may be waived pursuant to section 209(c) of the Act, as she is an asylee applying for adjustment of status under section 209 of the Act.

The applicant has submitted sufficient documentation demonstrating she has three U.S. citizen children, one of whom has autism, speech impediments, and other learning disorders. The record reflects that the three children, especially the one with autism, rely on the applicant for care and support. Additionally, the applicant has shown her mother and sister are both U.S. citizens who may experience difficulties if the applicant is not granted adjustment of status. Furthermore, the record indicates that the applicant is active in her community, and employs over 15 individuals in her pharmacy business. The AAO therefore finds the applicant has established that a waiver under section 209(c) of the Act should be granted for humanitarian purposes, to assure family unity, and is otherwise in the public interest.

The AAO further finds that the applicant's Form I-485 should be approved. Based on the present record, the applicant has shown she qualifies for adjustment of status under section 209(b) of the Act in that she has applied for adjustment, was physically present in the United States for one year since her grant of asylum in 1997, continues to qualify as an asylee, is not firmly resettled in a foreign country, and moreover qualifies for a waiver of inadmissibility under section 209(c) of the Act.

Lastly, the AAO concludes that the applicant qualifies for a favorable exercise of discretion as required by section 209(b) of the Act. The applicant's negative factors include her misrepresentation, as well as periods of unauthorized presence in the United States. Her positive factors include her establishment of a well-founded fear of persecution, strong family ties to the United States including her children, mother and sister, evidence of hardship to her U.S. citizen children, the lack of a criminal record, her contributions to her local community, and the passage of time since her immigration violations.

Although the applicant's violations of immigration law are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. The Form I-602 and I-485 applications will be approved.¹

ORDER: The director's decision is withdrawn and the Form I-602 and I-485 applications are approved.

¹ The date of the applicant's admission for lawful permanent residence will be in accordance with section 209(b) of the Act.