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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: MAY 12 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

MAY1203_03H2212

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and 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 attempted to enter the United States with a fraudulent Canadian passport on June 2, 1994. The applicant is therefore 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) as an alien who sought to procure admission into the United States by fraud. The applicant married a United States (U.S.) citizen on September 20, 1996, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director decision noted that the applicant and his wife live in different cities and that they have been separated for more than a year. The decision noted further that the applicant has a girlfriend and that he has a U.S. born child (born October 7, 2000) with his girlfriend. The district director concluded that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife and denied the application accordingly. *See District Director Decision,* dated July 17, 2002.

On appeal, the applicant asserts that he is remorseful, that his U.S. citizen daughter needs him, and that he is trying to succeed in the United States. The applicant asserts no other hardship.

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

> (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.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney

> General 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a U.S. citizen or resident child or hardship to the alien him or herself.

In his notice of appeal, the applicant indicates that he and his U.S. citizen daughter will suffer extreme hardship if he is not granted a waiver of inadmissibility. However, as indicated above, only extreme hardship to the applicant's U.S. citizen spouse may be considered for section 212(i) waiver purposes.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, (BIA 1999) provided a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In the applicant's case, the record is completely void of any evidence of hardship to his U.S. citizen wife and the applicant's notice of appeal asserts no hardship to his wife. To the contrary, the evidence in the record reflects that, although the applicant still appears to be married to his U.S. citizen wife, they live in different cities and have been separated for well over a year. Moreover, the applicant is involved in a relationship with a different woman with whom he had a child in October 2000.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having

found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.