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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: APR 0 8 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Haiti. He 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 willfully misrepresenting a material fact while attempting to procure admission into the United States on January 5, 1989. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and adjust his status under the Haitian Refugee Immigrant Fairness Act of 1998, Public Law 105-277 (HRIFA).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director Decision* dated July 30, 2002.

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 (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that January 5, 1989, the applicant sought to procure admission into the United States by presenting a photo-substituted Haitian passport. The applicant was placed in exclusion proceedings and subsequently applied for asylum. On March 14, 1989, an immigration judge denied his applications for asylum and withholding of removal and the applicant was ordered removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals, which was dismissed on June 26, 1991. The applicant married a U.S. citizen on August 17, 1995, and a petition to classify him as a spouse of a U.S. citizen was denied on March 13, 1997.

On appeal counsel asserts that the denial of the waiver application is contrary to law. Counsel states that since the applicant is applying for adjustment of status under HRIFA he does not have to show that extreme hardship would be imposed upon a qualifying relative.

Section 245.15 of the Act provides, pertinent part:

> Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).
>
> (e) Applicability of grounds of inadmissibility contained in section 212(a).
>
> > (1) Certain grounds of inadmissibility inapplicable to HRIFA applicants. Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.
> >
> > (2) Availability of individual waivers. If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter....

There is nothing in section 902 of the HRIFA that waives the ground of inadmissibility under section 212(a)(6)(C) of the Act. If an applicant for adjustment of status is found inadmissible under section 212(a)(6)(C) of the Act, then he or she must obtain a waiver under section 212(i) of the Act and meet the standards therein.

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 on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On the Application for Waiver of Ground of Excludability (Form I-601) the applicant provides information about his U.S. Citizen and lawful permanent resident brothers as relatives through whom he claims eligibility for a waiver. As stated above, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or lawfully resident siblings.

A review of the documentation in the record reflects that the applicant has failed to show that he has a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act. 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.