



U.S. Department of Justice
Immigration and Naturalization Service

HI

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

PUBLIC COPY

File: [REDACTED] Office: MONTERREY, MEXICO

Date: FEB 2 2001

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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Monterrey, Mexico, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found by a consular officer to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation in 1997. The applicant is the unmarried son of a lawful permanent resident of the United States and is the beneficiary of an approved preference visa petition. He seeks the above waiver in order to travel to the United States to reside near his mother.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relative and denied the application accordingly.

Although an attorney has filed a Notice of Appeal (Form I-290B) in this matter, the record does not contain a Notice of Entry of Appearance of Attorney or Representative (Form G-28). Therefore, the applicant is considered as self-represented. On appeal, statements have been submitted to indicate that the applicant's presence in the United States would be very beneficial to his mother, as he would provide physical, psychological and financial support to her. It is asserted that the denial of the applicant's waiver request would cause extreme hardship to his mother as he is her only child and she has no one else to take care of her.

The record reflects that the applicant sought to procure admission into the United States in January 1991 by presenting a photo-substituted Jamaican passport belonging to another person. He admitted to having obtained the document fraudulently, was found by an immigration officer to be inadmissible to the United States, withdrew his application for admission and was returned to Jamaica.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT. -

(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 § 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. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez-Moralez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant's mother submitted a statement that she and her husband are not in good health. Her husband suffered a stroke in 1999 which left him with some weakness on one entire side of his body (the record is unclear as to which side) and he has difficulty moving. Due to his incapacity, he is unable to work on a full time basis. If her son is permitted to immigrate to the United States, he will be employed in the family's furniture business and will thus be able to assist his mother financially. Although the applicant's mother is currently employed, she states that she and her husband need the applicant in the United States to



assist them as much as possible in their daily lives. In addition, the applicant's mother states that she needs the companionship, support and love of her son and his children.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's mother (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.