U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: JAN 10 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)

IN BEHALF OF APPLICANT:

[redacted]

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 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(6)(C)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(1), for having sought to procure admission into the United States by fraud or willful misrepresentation. He seeks a waiver of inadmissibility under 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, Pub. L. 105-277 (HRIFA).

Though the acting director's denial letter is not contained in the file, the record indicates that the waiver application was denied on May 6, 2002. As the record appears otherwise complete, a decision will be made based on the information available.

On appeal the applicant states that his legal permanent resident father will suffer extreme hardship if he is removed to Haiti. He indicates that his father is old and relies on him for his daily needs.

The record reflects that the applicant sought to procure admission into the United States on December 27 1992, by presenting a photo-substituted Haitian passport in the name Wilfred Etienne.

Section 212(a) of the Act states:

> 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 902 of HRIFA provides that an applicant who is inadmissible under section 212(a)(6)(C) of the Act is ineligible for adjustment of status under HRIFA unless he or she receives a waiver of that ground of inadmissibility.

Section 212(i) of the Act states:

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

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994).

The record contains a doctor's assessment that indicates that the applicant's father suffers from mild hypertension and occasional joint pains and is taking medication for both. There is also a letter from Temple Beth Torah dated August 21, 2001 that states that the applicant's father has been working with them since August 1990. The letter indicates that that applicant's father "works tirelessly in many different areas and is always willing to learn more and take on new responsibilities."

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his father would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. There is no indication that his father suffers from a medical condition that requires constant care or that his father is dependent on him for financial assistance. Nor is there any indication that his father, a native of Haiti, would be unable to move there to be with his son.

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.

The burden of proving eligibility in this proceeding 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.