



U.S. Department of Justice

Immigration and Naturalization Service

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

File: [redacted] Office: KINGSTON, JAMAICA

Date:

JAN 29 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:



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 Officer in Charge, Kingston, Jamaica, 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 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 sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is the unmarried daughter of a naturalized United States citizen mother and is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. 1182(i), in order to travel to the United States to reside.

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

On appeal, counsel submits a brief arguing that the applicant's waiver request should be considered under the version of section 212(i) of the Act that existed at the time the petition for alien relative was filed on the applicant's behalf. Counsel asserts that establishing eligibility for a waiver under the then-existing provisions of section 212(i) of the Act would mean that the applicant is eligible for a waiver as the mother of two United States citizen children. Counsel also asserts that the applicant's children are suffering extreme financial and emotional hardship due to separation from the applicant.

The record reflects that the applicant was previously admitted to the United States in 1980 and 1993 as a nonimmigrant visitor for pleasure. She last applied for admission in 1996, again as a nonimmigrant visitor, by presenting a Jamaican passport containing a back-dated Jamaican landing stamp to conceal the fact that she had previously stayed in the United States longer than authorized. She withdrew her application for admission and was returned to Jamaica.

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.

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

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 Matter of Cervantes-Gonzalez, supra, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 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.

The record reflects that the applicant gave birth to two children, born in 1989 and 1993, while in unlawful status in the United States. The applicant's mother immigrated to the United States in 1994 and naturalized as a citizen of the United States in 2000. The applicant also asserts that she has two sisters who are lawful

permanent residents of the United States.

The record contains an affidavit from the applicant's mother indicating that the applicant's children are currently residing with her (the mother's) sister in Miami, Florida. The mother also states that she will suffer extreme hardship if the applicant is not permitted to immigrate to the United States because she will be burdened with the care, support, and upbringing of her granddaughters (the applicant's children).

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.

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 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. Hardship to the applicant's children is not a consideration in section 212(i) proceedings. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. 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.