

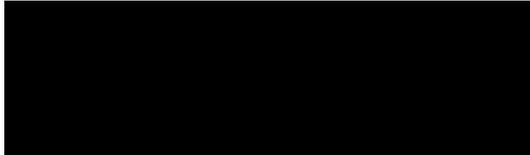
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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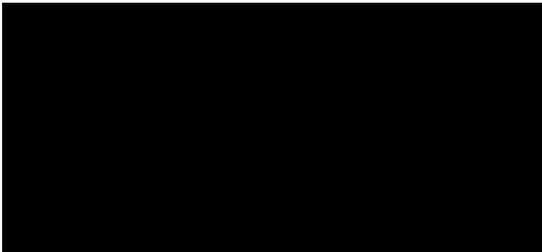


*H2*

FILE:  Office: MIAMI DISTRICT OFFICE Date: OCT 19 2005

IN RE: Applicant: 

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:  


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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Miami, 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 was found 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 attempting to procure entry into the United States by fraud or willful misrepresentation. 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 with her U.S. citizen father, U.S. citizen children, and permanent resident husband.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of Acting District Director*, dated July 27, 2003.

On appeal, counsel for the applicant provides that, while the applicant was not married as of the date of filing her Form I-601 application for a waiver, she subsequently married a permanent resident. *Brief in Support of Appeal*. Counsel asserts that the applicant's husband and children will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Id.*

The record contains a brief from counsel; a statement from the applicant's husband, dated September 18, 2003; a statement from the applicant's father, dated May 22, 2001; the applicant's marriage certificate; copies of birth certificates for the applicant and her two children; a copy of the applicant's father's naturalization certificate; a copy of the applicant's husband's permanent resident card, and; documentation on the applicant's attempted entry to the United States using a fraudulent passport. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on April 6, 1994 the applicant attempted to enter the United States using the passport of another individual. The applicant's photograph had been substituted for that of the true owner of the passport. Thus, the applicant made a willful misrepresentation of a material fact (her identity) in order to attempt to procure entry into the United States. Accordingly, the applicant was found 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). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of 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 of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's father and husband. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

On appeal, counsel provides that the applicant's husband will experience extreme hardship should the applicant be prohibited from remaining in the United States. The applicant filed her Form I-601, Application for Waiver of Ground of Excludability, on May 22, 2001, yet she was not married until December 21, 2002. An applicant must establish eligibility at the time of filing a Form I-601 application; an application cannot be approved at a future date after the applicant becomes eligible under a new set of facts. *See eg. Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, as the applicant was not married to her husband at the time she filed her Form I-601 application, hardship that her husband experiences as a result of her inadmissibility is not relevant in the present proceeding.<sup>1</sup>

Counsel further discusses hardship to the applicant's U.S. citizen children. Pursuant to section 212(i)(1) of the Act, hardship to the applicant's children is not probative of her eligibility for a waiver.

Accordingly, the only relevant hardship in the present matter is that experienced by the applicant's U.S. citizen father. Counsel does not discuss hardship to the applicant's father on appeal. The record contains a brief letter from the applicant's father submitted in support of the initial Form I-601 application. The applicant's father stated that he will be happy to have the applicant remain in the United States. *Statement from Applicant's Father in Support of Form I-601*. The applicant's father does not indicate that he relies on the applicant for emotional or financial support. The applicant's father provided that the applicant has no one else to take care of her, but the record lacks evidence that the applicant's father supports her financially. It is

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<sup>1</sup> It is noted that the applicant may file a new Form I-601, Application for Waiver of Ground of Excludability, allowing Citizenship and Immigration Services (CIS) to properly consider possible hardship to her husband. While the applicant submitted a revised Form I-601 to the AAO with a motion to remand, the form contains no evidence that it was filed with the appropriate CIS office or that it was accompanied by the necessary fee, both of which are required in order to have a new Form I-601 application adjudicated.

noted that the applicant resides in Miami, Florida, while her father resides in Brooklyn, New York. *Form I-601, Application for Waiver of Ground of Excludability*.

Upon review, the applicant has not established that her father will experience extreme hardship if she is prohibited from remaining the United States. While the applicant's father implied that he will be unhappy if the applicant is compelled to depart the United States, the record does not show that he will experience consequences that go beyond those experienced by all families who are separated due to deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that 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. Thus, the applicant has not shown that her father will suffer extreme hardship should she depart the United States.

The record does not support that the applicant's father will endure economic hardship as a result of the applicant's absence. While he stated that the applicant has no one else to care for her, the applicant has not shown that he is responsible for her financial needs, such that he would experience hardship if he were required to support her abroad. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Based on the foregoing, the hardship that will be experienced by the applicant's father should the applicant be prohibited from remaining in the United States does not rise to the level of extreme hardship. 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(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.