



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: BALTIMORE

Date: OCT 06 2006

IN RE: [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)

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Baltimore, Maryland, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the daughter of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her mother and daughter.

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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated March 18, 2003.

The record reflects that, on November 28, 1992, the applicant obtained admission to the United States by presenting a U.S. passport belonging to another. In 1995, the applicant's mother, [REDACTED] (Ms. [REDACTED]) became a lawful permanent resident. On March 6, 1996, the applicant's mother filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. On November 15, 1996, the Form I-130 was approved but an immigrant visa number was not immediately available to the applicant. On March 20, 2001, the applicant gave birth to her U.S. citizen daughter. On July 20, 2001, the applicant's mother became a naturalized U.S. citizen. On April 9, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On May 22, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Baltimore District Office. The applicant admitted to procuring admission to the United States by fraud in 1992. On July 26, 2002, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's mother would suffer extreme hardship due to her deteriorating health. *See Applicant's Brief*, dated June 30, 2003. In support of her contentions, counsel submitted a brief and copies of medical documentation for the applicant's mother. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.
- (ii) Falsely claiming citizenship. –
 - (I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The acting district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted fraudulent claim to U.S. citizenship to procure admission into the United States in 1992. Counsel does not contest the acting district director's determination of inadmissibility.

The record reflects that Ms. [REDACTED] is a native of Jamaica who became a lawful permanent resident in 1995 and a U.S. citizen in 2001. The applicant has a five-year old daughter who is a U.S. citizen by birth. The record further reflects that the applicant is in her 30's and [REDACTED] is in her 60's. There is evidence in the record that [REDACTED] has some health concerns.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S.

citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen daughter will not be considered in this decision, except as it may affect the applicant's mother, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel asserts that Ms. [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant because the applicant is now the main provider because Ms. [REDACTED] health has deteriorated to a state in which she can no longer earn a living, she is dependent emotionally and financially on the applicant, she would be unable to sufficiently care for the applicant's daughter in the applicant's absence and she would be parted from her only daughter and granddaughter. Ms. [REDACTED] in her affidavit, states that the applicant has provided her with critical financial support and that she has had some health difficulties.

The medical documentation in the record reflects that Ms. [REDACTED] suffers from hypertension, hyperlipidemia and left knee pain. In 2002, Ms. [REDACTED] doctor placed her on a week of light duties. The medical documentation indicates that Ms. [REDACTED] knee pain started in December 2002. The medical documentation reflects that, in March 2003, Ms. [REDACTED] continued to complain of knee pain after she had worked, indicating that Ms. [REDACTED] is still capable of performing her work duties despite the injury and any other health concerns she may have. At that time, Ms. [REDACTED] refused the recommended knee reconstruction surgery and opted for a stabilizing brace. The medical documentation then reflects that, in April 2003, Ms. [REDACTED] scheduled the knee reconstruction surgery. The AAO notes that there is no further medical documentation to reflect the outcome of the surgery and, besides the week of light duties in 2002, there is no medical documentation to reflect that

Ms. [REDACTED] has been or continues to be unable to perform her work duties or daily activities due to any health concerns.

Financial records indicate that, in 2001, Ms. [REDACTED] earned approximately \$22,395. Counsel asserts that, since 2002, Ms. [REDACTED] health has deteriorated to a point where she can no longer work and earn sufficient income to support herself without the applicant. As discussed above, there is no evidence in the record to suggest that Ms. [REDACTED] is unable to perform her work duties, alternative duties or daily activities due to her health. The record shows that, even without assistance from the applicant, Ms. [REDACTED] earns sufficient income to more than exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The record does not support a finding of financial loss that would result in extreme hardship to her if she had to support herself and the applicant's daughter without the additional income provided by the applicant. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent to her granddaughter and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. As discussed above, there is no evidence in the record to suggest that Ms. [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel contends that Ms. [REDACTED] would suffer extreme hardship if she were to return to Jamaica with the applicant because she would be unable to receive proper care for her health concerns. However, in her affidavit, Ms. [REDACTED] does not indicate that she would return to Jamaica with the applicant or that she would suffer hardship if she returned to Jamaica with the applicant. The statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). The AAO is, therefore, unable to find that Ms. [REDACTED] would experience hardship should she choose to join the applicant in Jamaica. Additionally, the AAO notes that, even if counsel had established Ms. [REDACTED] would suffer extreme hardship by accompanying the applicant to Jamaica, as a U.S. citizen, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a daughter is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927

F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen mother as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.