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FILE:

Office: BOSTON, MA

Date:

AUG 30 2007

IN RE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, 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 having attempted to procure admission into the United States by fraud or willful misrepresentation on September 14, 1993. The applicant is married to a U.S. citizen and has three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant had not demonstrated that her spouse would suffer extreme hardship upon her removal from the United States. The application was denied accordingly. *District Director's Decision*, dated October 8, 2005.

On appeal, counsel asserts that the district director erred in his adjudication of the applicant's waiver application when he did not take into account the country conditions in Haiti at the time the applicant left Haiti and entered the United States. Counsel asserts that under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), the district director is required to consider these factors in conjunction with section 212(i) of the Act. In addition, counsel asserts that the applicant's spouse and children would suffer extreme hardship as a result of the applicant's inadmissibility and that as a matter of discretion, the applicant's waiver application should be approved. *Counsel's Brief*, dated December 3, 2005.

The record indicates that on September 14, 1993 the applicant presented a fraudulent visitor's visa in an attempt to gain entry into the United States. The applicant did not admit to immigration officers that this visa was fraudulent until after she was taken to secondary inspection. *Form G-2*, dated September 14, 1993.

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.

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. Hardship the alien herself experiences or her children experience due to separation is not considered

in section 212(i) waiver proceedings unless it causes hardship to the applicant's U.S. citizen and/or lawful permanent resident spouse and/or parent. 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).

In HRIFA adjustment cases, the regulation at 8 C.F.R §245.15 states, in pertinent part, that:

(e) Applicability of grounds of inadmissibility contained in section 212(a).

(1) Certain grounds of inadmissibility inapplicable to HRIFA applicants.

Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) Availability of individual waivers.

If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter. . . . In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

Therefore, once an applicant establishes extreme hardship to a U.S. citizen and/or lawful permanent resident spouse and/or parent, the adjudicator, when weighing whether the Service should exercise favorable discretion in an applicant's case, must consider the circumstances in Haiti at the time of the applicant's departure.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Haiti or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

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, 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).

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Haiti. In his affidavit, the applicant's spouse states that if the applicant is removed to Haiti he will remain in the United States with their two children. *Spouse's Affidavit*, dated December 29, 2004. He states that the current conditions in Haiti are horrible because of political unrest and the severe flooding from Hurricane Jeanne. *Id.* He also states that the applicant will earn very little money in Haiti. *Id.* The record contains a 2003 State Department Country Report on Human Rights Practices in Haiti. This report states that the Haitian government's human rights record remained poor, with political and civil officials implicated in serious abuses. *2003 State Department Report*, Page 2. In addition, the State Department's current background notes for Haiti state that Haiti remains the least-developed country in the Western Hemisphere and one of the poorest in the world. Comparative social and economic indicators show Haiti falling behind other low-income developing countries (particularly in the hemisphere) since the 1980s. Haiti now ranks 150th of 175 countries in the UN's Human Development Index. *2007 State Department Background Notes on Haiti*. However, as the record does not address what specific difficulties the applicant's spouse would face if he relocated to Haiti, it does not establish that the applicant's spouse would suffer extreme hardship upon relocation.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse expresses his concerns that the applicant would not be able to earn much money in Haiti. He states that it would be very difficult for him to support himself and his children without the help of the applicant. *Spouse's Affidavit*, dated December 29, 2004. The applicant's spouse also contends that the applicant's return to Haiti alone in light of the destruction caused by Hurricane Jeanne as well as the daily violence and political unrest, would be an emotional hardship for him. *Id.* The 2003 State Department Country Report on Human Rights Practices in Haiti raises concerns for the human rights of women living in Haiti. The 2003 Report states that rape and other abuses of women are common, both within and outside marriage. Women's shelters and organizations reported that local armed thugs frequently raped and harassed girls and women in the country's slums. The 2003 Report goes on to state that very poor female heads of households in urban areas often find their employment opportunities limited and that women do not enjoy the same social and economic status as men. However, well-educated women

have occupied prominent positions in both the private and public sector in the past several years. The 2007 State Department Country Report on Human Rights Practices in Haiti continues to raise concerns for the human rights of women living in Haiti. The 2007 Report states that rape was on the increase in Haiti and that women's shelters and organizations reported that local armed thugs frequently raped and harassed girls and women in districts such as Cite Soleil and Martissant. The 2007 Report also states that police rarely arrested the perpetrators or investigated the incidents, and the victims sometimes suffered further harassment in retaliation and feared reprisals from the perpetrators. Like the 2003 Report, the 2007 Report also states that female heads of households had limited employment opportunities. The AAO recognizes that because of the country conditions in Haiti a relative in the United States would be concerned for the well-being of a relative living in Haiti. However, the record does not establish that the applicant's spouse would fall into the category of women that would be subject to severe discrimination and/or violence, causing concern to her spouse that could rise to the level of extreme hardship. The record shows that the applicant's father lives in Les Cayes, Haiti, the applicant's birthplace and that she is trained as a nurse's aid. The record does not show that upon her return to Haiti the applicant would be unable to live with her father and/or find employment as a nurse's aid, thus removing her from the category of women who suffer severe discrimination and/or violence. Therefore, the current record does not establish that the applicant would suffer extreme hardship as a result of being separated from the applicant.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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. Accordingly, no consideration of the circumstances in Haiti at the time of the applicant's departure is required, as the applicant has not met the first hurdle of establishing extreme hardship to her spouse.

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* 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.