



U.S. Citizenship
and Immigration
Services

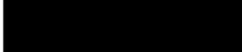
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FILE:



Office: KINGSTON, JAMAICA, W.I.

Date: JUL 16 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Kingston, Jamaica, and 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 attempted to procure entry into the United States by presenting a photo-substituted passport containing a U.S. visa. After being refused entry, the applicant made a "credible fear" claim and was temporarily admitted. The applicant was unable to substantiate her claim of credible fear and was ordered removed from the United States. Prior to departing the United States, the applicant married a U.S. citizen on December 12, 2001 and Form I-130, Petition for Alien Relative, was filed on her behalf on December 27, 2001. The applicant departed the U.S. pursuant to the removal order and returned to Jamaica in January 2002. The applicant filed an immigrant visa application at the U.S. Embassy in Kingston, Jamaica and was subsequently 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 now 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 U.S. citizen spouse.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 25, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of the waiver request, counsel submits a brief, dated October 28, 2005; a removal order issued to the applicant; Form I-130 approval notice; Form I-824 approval notice; an unsigned and undated Letter of Hardship from the applicant's spouse, a U.S. citizen; a monthly financial report of expenses incurred by the applicant's spouse; a letter from the applicant's physician confirming her pregnancy; and ultrasound photos. 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.

Based on the evidence in the record, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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...

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 applicant 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 spouse. 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 Board 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.

To begin, counsel asserts that the applicant and her spouse have a strong bond and a legitimate relationship. *Brief in Support of Appeal*, dated October 28, 2005. As the applicant states in his letter of hardship, "...I am having a difficult time living alone without my wife [the applicant] that is overseas for past 32 months...It's hard to manage my daily job, and to go home to a empty house....the need for emotional support and physical fulfillment is real and deep...I feel terrible when I am too far away to comfort, protect and holder her in my arms...we need each other desperately...I am concerned for our emotional health. Frankly put, it scares me." *Letter of Hardship from* [REDACTED]. No objective evidence is provided to corroborate the applicant spouse's concerns with respect to his emotional health, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's absence.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

According to counsel's brief, the applicant's spouse returns to Jamaica to visit his wife every three months. *Brief in Support* at 4. The applicant and her spouse also communicate daily by phone. Counsel provides no explanation for why the applicant's spouse would be unable to relocate to Jamaica and find gainful employment and be able to live with the applicant. Although born in the United States, the applicant's spouse is clearly comfortable in Jamaica as he travels there often, and both of his parents were born in Jamaica. As such, it has not been established that the applicant's spouse would not be able to relocate to Jamaica without encountering extreme hardship.

The applicant's spouse, in his statement, references the financial burden of maintaining two households, one in the United States for himself, and one for the applicant residing in Jamaica. As he states in his Letter of Hardship, "...Because we are living in two separate countries, I am responsible for paying rent, utilities, and other expenses for two households; My wife's in Jamaica and mine...in the US...I pay rent in Jamaica and mortgage in the U.S. since February 2004. There are also utility bills[,] electricity, water, telephone. We must also pay for food, school fees and a host of other bills. We are financially [sic] struggling every month to meet...bills on time." *Letter of Hardship from* [REDACTED] The applicant is 27 years old and counsel provides no explanation as to why the applicant is unable to support herself financially and assist her spouse with the costs of maintaining two households. The record is silent on this issue.

Pursuant to a letter issued by [REDACTED], Obstetrician and Gynecologist, "...[REDACTED] [the applicant] is pregnant. She is presently at twenty-nine week[']s and one day gestational age. Her due date is EDD=2005/12/01. [REDACTED] is in good health, and her pregnancy has progressed satisfactorily to date." *Letter from* [REDACTED] OB/GYN, dated September 16, 2005. Counsel provides no supplemental information regarding the unborn child. Irrespective of the child (and the child's citizenship status at this time), section 212(i) of the Act does not list children as qualifying relatives for extreme hardship purposes.

Finally, the applicant's spouse states that his mother suffered a stroke in February 1999 and has been disabled since then and due to his work and school schedule, it is impossible to take his parent to all her appointments. *Letter of Hardship from* [REDACTED] Section 212(i) of the Act does not list parents of an applicant's spouse as qualifying relatives for extreme hardship purposes. Although the applicant's spouse expresses a need to have the applicant assist him with respect to tasks involving his mother, it is clear that he has been able to make satisfactory arrangements to take care of his mother for many years, without the applicant's presence. Counsel provides no evidence to suggest that such arrangements with respect to his mother's case have caused the applicant's spouse extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she is unable to return to the United States. 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. Thus, the AAO finds it

unnecessary to determine whether the officer in charge erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

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. 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.