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U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date: JUN 08 2007

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).

ON BEHALF OF APPLICANT:

[REDACTED]

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 application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application denied.

The applicant is a native and citizen of Haiti 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined that the applicant had failed to establish that a qualifying family member would suffer extreme hardship if he were refused admission into the United States. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts, through counsel, that his U.S. citizen wife will suffer extreme hardship if he is denied admission into the United States, and he asks that U.S. Citizenship and Immigration Services (CIS) waive his ground of inadmissibility.

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

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.

The record reflects that on March 15, 1996, the applicant sought admission into the United States by using a fraudulently obtained passport. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 applicant's spouse is a naturalized U.S. citizen. The applicant is thus eligible to apply for relief under section 212(i) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors that it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now, removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant asserts, through counsel, that his wife [REDACTED] would suffer extreme financial and emotional hardship if she returned to Haiti with the applicant, or if she remained in the United States without him. The applicant asserts that although his wife was born in Haiti, she is a naturalized U.S. citizen who has lived, worked and raised a family in the United States. The applicant asserts that [REDACTED] has worked for the South Shore Hospital in Chicago as a nurse's assistant and in a secretarial capacity for approximately 31 years, and that she earns a steady living and has employment benefits in the United States. The applicant asserts further that [REDACTED] three adult U.S. lawful permanent resident children from a former marriage, and her grandchildren whom she is close to, live near her in the Chicago area. The applicant asserts that [REDACTED] dependent U.S. lawful permanent resident mother also lives with them, and that [REDACTED]'s mother requires constant care due to the onset of Alzheimer's Disease. The applicant asserts that the economy in Haiti is very poor, that Haiti is unstable and an unsafe place to live, and that it would cause [REDACTED] extreme hardship if she were to return there. The applicant asserts further that [REDACTED] would suffer hardship if she were separated from the applicant because she loves him very much and has a very close relationship with him. The applicant asserts that [REDACTED] also relies on the applicant's financial contributions to their household, and that she relies on the applicant to help her care for her mother.

In support of his assertions the applicant submits:

A U.S. Department of State, Country Conditions Report for Haiti, reflecting the country's instability, poverty and unemployment levels.

News articles about nursing home care costs in the Chicago area, reflecting that the average daily cost for such care is over \$136.00 a day.

A February 25, 2003, affidavit signed by [REDACTED] stating that she and the applicant were married in Chicago on December 8, 1996, that she loves the applicant, and that the applicant is an excellent husband and friend. [REDACTED] states that the applicant has been good to her parents, and that her family is very close to him. [REDACTED] states further that she would face financial hardship if she moved to Haiti with the applicant and lost her \$38,000 a year job and her employment related health insurance and benefits. [REDACTED] states that she would miss her family if she moved, and that she and her parents would suffer hardship because they are old and her father is seriously ill.¹ [REDACTED] states further that she is very close to her husband, and that the thought of being separated from him has caused her to feel depressed, and has affected her sleeping and eating.

A March 10, 2003, letter from [REDACTED]'s daughter, [REDACTED], stating that her mother cannot care alone for her grandmother, who is partially blind and developing Alzheimer's, Disease, and that the applicant helps her mother by being in the house with her grandmother from 3pm to 11am. [REDACTED]

¹ It is noted that [REDACTED] father passed away after the filing of the applicant's Form I-601 application.

states that her grandmother would need to stay in a nursing home if the applicant did not help to care for her. states further that the applicant is part of their family, that he has made her mother happy, and that her mother would go crazy if the applicant had to return to Haiti.

Copies of federal taxes reflecting that she earns approximately \$38,000 a year, and that her mother is listed as a dependent.

Letters from South Shore Hospital reflecting that began working for the hospital in March 1974, and that she is a full-time employee.

A letter from Morgan Services, Inc., reflecting that the applicant works about 40 hours a week and that he earns \$9.69 per hour.

Upon review of the totality of the evidence, the AAO finds that the applicant has established that his wife would suffer hardship beyond that normally suffered upon removal or inadmissibility of a family member, if she moved to Haiti with the applicant. Although the record reflects that is originally from Haiti, the evidence contained in the record establishes that's family is now in the United States and that has worked for the same employer for over 30 years and has accrued employment insurance and benefits through her employer. In addition, the evidence reflects that Haiti is a poor country with a poor economy, and that it would be difficult for to find work in Haiti if she left her job in Chicago. The AAO finds that the combined impact that relocating to Haiti would have on , amounts to extreme hardship

Nevertheless, the AAO finds that the applicant has failed to establish that would suffer extreme hardship if the applicant were denied admission, and remained in the United States. It is noted that the record contains no independent medical evidence to corroborate's assertion that mother requires full time nursing care, or that mother suffers from partial blindness or the onset of Alzheimer's Disease. Moreover, even if the above medical conditions were established, the applicant states through counsel, in a brief submitted with his initial Form I-601 application, that he and his wife pay for his mother-in-law's clothes, food and other necessities, but that his mother-in-law also receives Social Security benefits. Furthermore, the financial earnings information contained in the record reflects that is the primary earner in their family, and that she would be able to support her household without the applicant's financial contributions. The AAO notes further the U.S. Supreme Court holding that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." See *INS v. Jong Ha Wang, supra*. The record additionally lacks evidence to corroborate the assertion that suffers from depression or that she has experienced eating or sleeping disorders, and the record contains no evidence to establish that would suffer physical or emotional hardship beyond that normally experience upon removal or inadmissibility of a family member, if the applicant's Form I-601 application were denied and she remained in the United States.

A section 212(i) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. In the present matter, the applicant failed to establish that his wife would suffer extreme hardship if he is denied admission into the United States. The AAO thus finds it unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that his wife would suffer hardship beyond that which is normally to be expected upon removal or inadmissibility. The applicant has therefore failed to establish that

he is eligible for relief under section 212(i) of the Act. Accordingly, the appeal will be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.