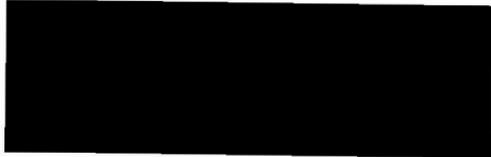




U.S. Citizenship
and Immigration
Services

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HR2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 30 2007**

IN RE:

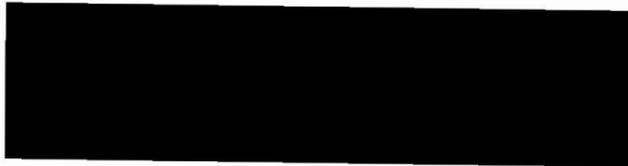
Applicant:



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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under a different name. The record indicates that the applicant's mother is a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen mother and siblings.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated June 23, 2006.

On appeal, the applicant, through counsel, asserts that the Director "misinterpreted" the facts. *Form I-290B*, filed July 26, 2006. Counsel states that "[o]nce those facts are clarified, along with additional evidence...the evidence shows that the applicant's U.S. citizen mother would suffer extreme hardship if the applicant is refused admission as a permanent resident." *Id.*

The record include [redacted] imited to, counsel's brief, letters from the applicant's siblings, a psychological evaluation by Dr. [redacted] nd a letter from [redacted]. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

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

- (i) (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...

The AAO notes that the record contains several references to the hardship that the applicant's siblings would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident siblings. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant's siblings will not be considered, except as it may cause hardship to the applicant's mother.

In the present application, the record indicates that in February 1993, the applicant entered the United States using a visa and passport in another person's name. On February 27, 1995, the applicant's mother, a lawful permanent resident at the time, filed a Form I-130 for the applicant, which was approved on October 13, 1995. On January 8, 2003, the applicant's mother became a United States citizen. On February 27, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 23, 2006, the applicant filed a Form I-601. On June 23, 2006, the Director denied the Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen mother. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel contends that if the applicant were removed from the United States, her United States citizen mother would face extreme hardship. The applicant's mother suffered a stroke in 1998, which left her wheelchair bound. *See Letter from* [REDACTED], dated July 11, 2006. Ms. [REDACTED] states the applicant "comes to help her [mother] during weekdays - and on weeknights." *Id.* The applicant's mother is "dependent on other people for care in all areas of daily living (cooking, bathing, cleaning, laundry, dressing, shopping)." *Id.* Counsel states that even though the applicant's four siblings reside in the United States, "[t]he applicant constitutes the only caregiver for her ailing mother." *Brief on Appeal*, filed August 29, 2006. Counsel states that both of the applicant's sister's work full-time and are not able to help care for their mother. *Id.*; *see also Letter from* [REDACTED] dated August 18, 2006. Additionally, the applicant's brother's are married, with children who have medical conditions, so they are unable to contribute in caring

for their mother. *Id.*; see also Letter from [REDACTED], dated August 14, 2006. Dr. [REDACTED] states the applicant's mother is "anxious and suffering from a depressive disorder." *Psychological Interview and Report by [REDACTED] Ph.D.*, dated July 25, 2006. In Dr. [REDACTED] professional opinion, he "think[s] this mental disorder is in part related to [the applicant's] uncertain immigration status." *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant's mother and the psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's mother. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO finds that the applicant has demonstrated extreme hardship to her mother if she remains in the United States without the applicant. The applicant's mother relies on the applicant for all of her daily needs and her siblings cannot help their mother because of their employment situations and family responsibilities. However, the applicant has not demonstrated that her mother could not join her in Jamaica. The AAO notes that the applicant's mother is a native of Jamaica, who spent all of her formative years in Jamaica. Additionally, the applicant's three adult children reside in Jamaica, and it has not been established that they could not help in caring for their grandmother or that she would be unable to receive appropriate medical treatment. In regards to her depression, since the applicant's mother's depression is primarily caused by her separation from the applicant, if the applicant's mother moves to Jamaica then the depression would presumably no longer be an issue. The AAO notes that the applicant failed to provide any evidence that she could not obtain a job in Jamaica. The AAO, therefore, finds the applicant has failed to establish extreme hardship to her mother if she accompanies her to Jamaica.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she were to return to Jamaica with the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.