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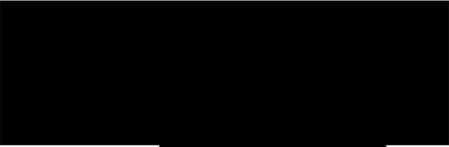
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: OCT 01 2007

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.

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 sustained.

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 procured admission into the United States by fraud or willful misrepresentation on December 21, 1994. The applicant is married to a U.S. citizen and has three children, two of whom the record documents as U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director concluded that the applicant failed to establish that a bar to his admission would result in extreme hardship to the applicant's U.S. citizen spouse. The application was denied accordingly. *Decision of the Director*, dated July 8, 2006.

On appeal, counsel asserts that the director overlooked and/or misconstrued the relevant evidence of record and the legal requirements regarding a finding of extreme hardship, that the director's decision violates the applicant's spouse's "fundamental constitutional right to marry", and that the findings made by the director concerning relocation to Haiti were arbitrary and capricious. *Form I-290B*, dated August 4, 2006.

The AAO notes that counsel's assertions regarding the applicant and his spouse being denied equal protection rights pursuant to the 5th Amendment. This issue will not be addressed in the present decision as constitutional issues are not within the appellate jurisdiction of the AAO.

The record indicates that on December 21, 1994, the applicant presented a lawful permanent resident card with the name "Majeur Dieujuste" to gain entry into the United States.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or his children experience due

to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's 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).

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 applicant 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.

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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Haiti or in the event that she resides in the United States, as she 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Haiti. The applicant states that his family would not be able to survive in Haiti where the annual income is about \$400 per year. *Applicant's Statement*, dated May 8, 2006. Counsel describes the country conditions in Haiti as dismal. He describes incidents of crime and violence that occurred in 2001, citing a State Department Report that indicated no areas in Haiti were safe. *Counsel's Brief*, dated January 12, 2004. The AAO notes that the 2006 State Department Human Rights Report for Haiti states that the government's human rights record remains poor and that much of the violence in the country stemmed from the activities of organized criminal gangs with common criminality and armed attacks against civilians continuing to create fear among the population. The current Consular Information Sheet for Haiti states that there are no safe areas in Haiti and that crime, a chronic problem over the years, has increased in recent years and is subject to periodic surges sometimes not obviously explained by other events or conditions. In addition, the Consular Information Sheet states that travel in Haiti can be dangerous with ordinary services such as water, electricity, police protection or government services being very limited or unavailable. The AAO finds that because of the current dangerous country conditions, relocation to Haiti would constitute extreme hardship for the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant states that his spouse and children would suffer emotionally and economically if he were removed from the United States. He states that he has been together with his wife since 1996. *Applicant's Statement*, dated May 8, 2006. The applicant's spouse states that the applicant is her best friend and a very good husband. *Spouse's Statement*, dated May 8, 2006. The applicant states that he earned \$1269.00 bi-weekly as a cook in a restaurant and his wife earns \$700.00 bi-weekly. He states that his wife's salary is not sufficient to provide for a family of five and that their mortgage payment is \$1,285.19 per month. The applicant submitted 2005 W-2 Forms for he and his wife which show that he earned \$49,208 and his wife earned \$25,872 during the year. The AAO notes that the Health and Human Services Poverty Guidelines, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml> (last revised January 24, 2007) indicates that \$30,163 is the minimum income needed to support a family of five in 2007. The applicant's spouse's income from her employment does not achieve this minimum. The AAO recognizes that the family would suffer economic detriment upon the applicant's removal, and that their standard of living would be reduced, but courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). The AAO notes that the applicant and his spouse have been together for 11 years and have two young children. The AAO finds that the emotional hardship that would result from their separation, together with the significant economic hardship that would occur should the applicant be removed, rises to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentation made on December 21, 1994 and periods of unauthorized presence.

The favorable factors in the present case are the applicant's family ties to the United States; extreme hardship to his U.S. citizen wife if he were to be denied a waiver of inadmissibility; the applicant's consistent record of employment, payment of taxes and financial support of his family; the applicant's lack of a criminal record or offense; and, as indicated by the statement from his spouse, the applicant's attributes as a good father and husband.

The AAO finds that the misrepresentation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.