



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 15 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), 8 U.S.C. section 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 applicant is a native and citizen of Haiti who was found 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 to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen mother.

The record reflects that the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) under the provisions of the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA) in January 2000. On her application, the applicant indicated that she gained admission to the United States on August 22, 1990 by presenting a false passport and U.S. visa. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 2, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated March 10, 2006.

In a brief submitted on appeal, counsel contends that the California Service Center did not have "jurisdiction" to render a decision on the waiver application, and the applicant was "prejudiced by the transfer of the I-601 waiver from Connecticut to California due to the fact that the interviewing officer in Hartford met with [the applicant] in person and questioned her concerning her application and her eligibility for a waiver." Counsel also maintains that the district director erred in not applying 8 C.F.R. § 245.15(e)(2), which requires an adjudicator, when weighing discretionary factors, to take into account conditions in Haiti that may have induced Haitian nationals to commit fraud or make willful misrepresentations to procure admission to the United States. Counsel asserts that the evidence shows that the applicant's mother will suffer extreme hardship if the applicant is removed from the United States, as she suffers from chronic hypertension and is dependent on the applicant for "financial as well as well as moral support." Finally, counsel summarizes the positive factors in the applicant's favor and contends that they outweigh any negative factors in this case.

The record includes counsel's brief; an affidavit from the applicant; an affidavit from the applicant's mother; a letter from the applicant's mother's physician; tax and other financial records for the applicant and her husband; and country conditions reports for Haiti. The entire record was reviewed in rendering a decision on the appeal.

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.

As stated above, the applicant has admitted that she was admitted to the United States on August 22, 1990 by presenting a false visa and passport to the inspecting officer.

The AAO first notes that counsel's contention that the California Service Center did not have "jurisdiction" to make a decision on the applicant's waiver application is without merit. Counsel cites no relevant statute, regulation or case law supporting the proposition that it was a legal error for the applicant's waiver application to be adjudicated by United States Citizenship and Immigration Services at its California Service Center.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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).

U.S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit, the applicant’s mother states that although she has Medicare, her daughter helps pay for her medications and assists her in attending her appointments for medical treatment for her high blood pressure. The applicant’s mother also states that the applicant helps pay for her food and clothing. She asserts that she would experience emotional and psychological hardship if the applicant returned to Haiti because she would worry that the applicant would be the victim of violence or environmental disaster, would be concerned for the well-being of her other children in Haiti without the remittances the applicant currently sends them from the United States, and would suffer from not being able to see the applicant’s children, her grandchildren. She contends that it would be extremely difficult for her to return to Haiti because of her high blood pressure.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s mother faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s mother will suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological consequences would constitute extreme hardship when considered with other hardship factors. Rather, the hardship described by the applicant and her mother is the typical result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. The U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Likewise, the applicant has failed to submit sufficient evidence showing that she would suffer financial hardship if the applicant returned to Haiti. The applicant and her mother have asserted that the applicant provides financial assistance to the applicant, but have not specified the amount of assistance or adequately

shown that the applicant's absence from the United States would result in financial hardship for the applicant's mother. Although the statements by the applicant and her mother are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

There is also insufficient evidence that the applicant's mother would suffer hardship if she relocated to Haiti. The applicant and her mother have asserted that the applicant's mother cannot travel there because of her high blood pressure, and the applicant has submitted general country conditions information for Haiti. But such evidence is insufficient to demonstrate that the applicant's mother would suffer extreme hardship if she relocated to Haiti.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen parent as required under section 212(i) of the Act. 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. Therefore, the regulation at 8 C.F.R. § 245.15(e)(2), which is relevant to the weighing of discretionary factors, is not applicable here.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.