

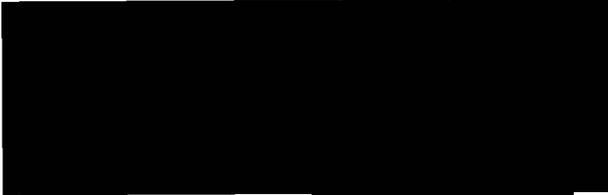
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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FL

Date:

MAY 12 2008

IN RE:



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.

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 District Director, Miami, Florida 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 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and 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 spouse and U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated February 7, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's statement*.

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a statement and an affidavit from the applicant's spouse; a statement from the applicant's child; medical records for the applicant's child; and employment letters for the applicant and her spouse. 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.

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.

The record reflects that the applicant used a false Haitian passport with a false United States temporary resident card to attempt to enter the United States on August 26, 1993. *See Record of Sworn Statement; Copies of passport and temporary resident card*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Haiti or the United States, as he is not required to reside outside 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.

If the applicant's spouse travels with the applicant to Haiti, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Haiti. *Form G-325A, Biographic Information sheet, for the applicant*. The record does not address what family members, if any, the applicant's spouse may have in Haiti and for how much time he resided in Haiti. The record also does not address what hardship the applicant's spouse may endure if he were to reside in Haiti. The AAO notes that the applicant's spouse states that currently in Haiti, there are economic problems and a lack of security. *Statement from the applicant's spouse*, dated November 1, 2004. While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record does not contain any supporting documentation, such as published country conditions reports, to support such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. See *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)). The applicant's spouse notes that he and the applicant have a son who suffers from asthma. *Statement from the applicant's spouse*, dated November 1, 2004; *Medical records for the applicant's son*. While United States or lawful permanent resident children are not qualifying relatives for this particular case, the AAO will consider the effect of hardship suffered by the applicant's children upon the qualifying relative. The AAO observes that there is nothing in the record addressing the adequacy of medical care in Haiti, particularly as it relates to the applicant's son. The record also fails to include any information as to how the medical condition of the applicant's child affects the applicant's spouse, the only qualifying relative in this case. When looking at the aforementioned factors, the AAO finds that the applicant has not demonstrated that her spouse would suffer extreme hardship if he were to reside in Haiti.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse states that the challenge of providing for his family would be exceedingly complicated if the applicant is returned to Haiti. *Statement from the applicant's spouse*, dated November 1, 2004. When the applicant's child has an asthma attack, the applicant is the parent who takes charge and accompanies her son to the hospital. *Id.* At times, the applicant takes time off of work to care for her child's illness. *Id.* The applicant's spouse is concerned that it will be too much for him to handle if his spouse is separated from the children. *Id.* While the AAO acknowledges these statements, it notes that the record does not address if there are any other family members who could assist the applicant's spouse with child caring responsibilities. The applicant's spouse notes that he will have to constantly provide financial support for the applicant in Haiti. *Id.* The AAO notes that the record does not establish that having to support two households would create an extreme financial hardship for the applicant's spouse or that the applicant might not be able to receive assistance from her family, including her parents, in Haiti.

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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of inadmissibility. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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)(9)(B) 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.