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MAIL STOP 2090



**U.S. Citizenship
and Immigration
Services**

H2



FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 25 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 cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 Jamaica 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 the spouse of a United States citizen. She 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.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her U.S. citizen spouse and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Director*, dated July 25, 2006.

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

In support of the assertions made on appeal, counsel submits a brief. The record also includes, but is not limited to, published country conditions reports; a statement from the applicant's spouse; a Psychoemotional & Family Dynamics Assessment, prepared by [REDACTED] LMHC; a statement from [REDACTED]; tax statements for the applicant and her spouse; earnings statements and W-2 Forms for the applicant and her spouse; 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that on March 12, 1989 the applicant was admitted to the United States with a fraudulent B-2 visa and passport. *Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-94; copy of passport and visa.* As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from a 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 would experience upon removal is not directly relevant to the determination as to 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 found to be inadmissible. 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 (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's or United States citizen's 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 whether he resides in Jamaica 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 Jamaica, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of the United States Virgin Islands. *Birth certificate for the applicant's spouse.* His parents reside in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* Jamaica is a country unknown to the applicant's spouse and he has lived practically all of his life in New York, where he has his job, and his social and family network, including his mother and two sisters, all of whom all live in the Bronx. *Psychoemotional & Family Dynamics Assessment* [REDACTED] LMHC, dated August 16, 2006. The applicant's spouse is legally blind. *Statement from* [REDACTED] dated March 17, 2003. He states that, in Jamaica, the hospitals are poorly equipped, understaffed, and people generally die from ailments considered easily treatable in the United States. *Statement from the applicant's spouse*, dated August 29, 2005. He notes that he could not get the medical help that he needs in Jamaica. *Id.* Country conditions reports confirm that, in Jamaica, training programs have not been able to meet the demand for healthcare personnel except in the area of medical doctors, dental nurses, and community health aides. *Jamaica, the Pan American Health Organization, Promoting Health in the Americas.* Shortages are compounded by the continual loss of public sector personnel to the private sector, and by the emigration of personnel to other countries. *Id.* When looking at the aforementioned factors, particularly the applicant's spouse's lack of cultural and familial ties to Jamaica; his health condition as documented by a licensed healthcare professional; and the lack of available medical

resources in Jamaica as documented by published reports, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Jamaica.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The parents of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. As previously noted, the applicant's spouse is legally blind with his most recent examination occurring on March 17, 2003. *Statement from [REDACTED]*, dated March 17, 2003. Counsel for the applicant asserts that the applicant's spouse is legally prevented from driving a car and cannot get along in his daily activities without assistance. *Attorney's brief*. Currently, he relies upon the applicant for all of this help. *Id.* Without the applicant, he would need to hire a health aid or a personal assistant, which he cannot currently afford. *Id.* Counsel also contends that the eyesight of the applicant's spouse is becoming progressively worse. *Id.* The AAO acknowledges the assertions made by counsel, however, it notes that the record fails to include any documentary evidence to support such assertions. While the record includes a statement from a licensed health professional that establishes that the applicant's spouse is legally blind, there are no documents in the record to specify his limitations or his medical prognosis. The AAO notes the applicant's spouse has worked as a food and beverage outlet manager for the Westin New York hotel from June 30, 2005 to the present time, earning \$45,400.00 a year. *Employment letter for the applicant's spouse*, dated August 23, 2005. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's spouse has been experiencing anxiety and depression and has been diagnosed by [REDACTED] a certified clinical psychopathologist, as having Adjustment Disorder with Mixed Anxiety and Depressed Mood. *Psychoemotional & Family Dynamics Assessment*, [REDACTED], LMHC, dated August 16, 2006. [REDACTED] administered two standardized tests for anxiety and stress to the applicant's spouse, the Beck Anxiety and the Beck Depression II Inventories, the findings of which support his observations of the applicant's spouse as experiencing a severe anxious-depressive adjustment condition as a result of the applicant's possible removal. *Id.* Although [REDACTED]'s observation of the applicant's spouse was limited to a single interview and his evaluation would, therefore, ordinarily be of diminished evidentiary value, the AAO notes that his diagnosis also relies on the results of the standardized tests he administered to the applicant's spouse. Accordingly, the AAO will accept [REDACTED] evaluation of the emotional hardship being experienced by the applicant's spouse.

Although, as previously noted, the record fails to demonstrate that the applicant's spouse's eyesight will deteriorate further, it does establish that the eyesight of the applicant's spouse is significantly compromised. *Id.*; *Statement from [REDACTED]* dated March 17, 2003. When looking at the aforementioned factors, including the diminished eyesight of the applicant's spouse and his severe anxiety and depression, the AAO finds the applicant to have demonstrated extreme hardship to her spouse if he were to remain in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver, and periods of unlawful employment and presence.

The favorable and mitigating factors are the applicant's U.S. citizen spouse, the approved immigrant visa petition benefiting her, the extreme hardship to her spouse if she were refused admission and her long-term and supportive relationship with her spouse.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when 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.