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U.S. Citizenship
and Immigration
Services

H2

[redacted]

FILE: [redacted] Office: BALTIMORE, MARYLAND Date: DEC 22 2004

IN RE: Applicant: [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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Interim District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who procured admission into the United States on April 8, 1993, by presenting fraudulent documents in another person's name. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The interim district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband, and denied the application accordingly. On appeal, counsel maintains that the evidence shows that the applicant's husband would suffer extreme hardship due to the applicant's inadmissibility. Counsel submits a psychological evaluation performed by a clinical psychologist, and a statement written by the applicant's husband. Counsel also provides information about general country conditions in Jamaica.

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 may, in the discretion of the Attorney General, 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

(a) [I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . *See 18 U.S.C. § 1546.*

In this case, the applicant knowingly utilized a fraudulent passport in an assumed name to procure admission into the United States in violation of section 212(a)(6)(C).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez, supra,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her U.S. citizen spouse. On appeal, the applicant's husband states that he has lived in the United States for 19 years and has few ties to Jamaica, his native country. He notes that he is ill, having undergone a triple-bypass surgery "years ago" and suffering from type II diabetes. The record contains no independent evidence that the applicant's husband would be unable to function in the applicant's absence, however. The applicant's husband also points out that the applicant helps him pay the mortgage and medical and other bills, and he indicates that he needs her companionship. The record does not establish what financial impact the applicant's departure would have on the applicant's husband.

The applicant's husband does not elaborate on what he believes would happen if he chose to return to Jamaica with the applicant. On appeal, counsel submits the 1999 *U.S. Department of State Country Reports on Human Rights Practices, Jamaica,* but, other than providing general information about the human rights

situation in that country, there is no instruction as to how the report relates to the applicant's husband's specific situation. There is no documentation on the record that establishes that the applicant's husband would suffer extreme hardship were he to return to Jamaica with the applicant.

appears to have met with the applicant's husband on only one occasion, on October 16, 2003. concludes that it appears that the applicant's husband would suffer severe emotional consequences, including depression, upon her removal. There is no indication that the applicant would become incapacitated or disabled upon her departure, nor does recommend any treatment, therapy, or medication in this case. In other words, the physical and psychological results to the applicant's husband of her removal do not appear to go beyond that which is expected in such cases. The applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship based on the factors set forth in *Cervantes-Gonzales, supra.*

In *Cervantes-Gonzalez* the Board cited *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970) (citations omitted), stating that:

> [E]ven assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States. *Cervantes-Gonzalez* at 567.

Moreover, in *Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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 U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.