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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: JUL 12 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 District Director Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure benefits under this Act by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative based on her September 1, 1998, marriage to a U.S. citizen. She 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 and reside with her U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and the application was denied accordingly. *See District Director's Decision* dated October 23, 2002.

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.

On appeal, counsel refers to two AAO decisions, dated October 13, 1992, and March 19, 1993, which according to counsel have far more negative equities than the present case. Both of the cases counsel refers to date back to 1992 and 1993 years prior to the significant amendments made to the Act in 1996 by IIRIRA.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record reflects that in January 1994, a Petition for Alien Relative (Form I-130) was filed on behalf of the applicant by her first husband. An Application to Register Permanent Residence or Adjust

Status (Form I-485) was filed at the same time. The marriage certificated was later deemed to be fraudulent by the register for the Township of Irvington, New Jersey. By filing an application for benefits under the Act by fraud or willfully misrepresenting a material fact the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal counsel asserts that the applicant's inadmissibly under section 212(a)(6)(C)(i) of the Act has not been established. Counsel states hat the applicant came to the United States at the age of twelve and lived with her aunt. Her aunt gave the applicant's information to a "friend' who claimed to be able to "do papers". Counsel further states that the applicant was not aware of the details of the process, that she was only 19 years old at the time and that she did not willfully participate in the process. Furthermore counsel states that the applicant recently discovered that a Form I-130 had been filed on her behalf and that an ADIT stamp in her passport was fraudulent.

Counsel's assertion is not persuasive since the applicant signed both the Biographic Information (Form G-325) and Form I-485 on January 13, 1994. The applicant was born on September 4, 1972. She was therefore over 21 years of age at the time, not a minor as claimed by counsel. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who sought to adjust status by fraud or willfully misrepresenting a material fact.

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 a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed 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 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; 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.

On appeal, counsel submits a brief regarding the hardship the applicant's spouse (Mr. would suffer if the applicant were not permitted to remain in the United States at this time. In the brief counsel states that Mr. would suffer emotionally and financially if his spouse's waiver application were not approved. Furthermore, in the brief counsel states that it would be impossible for Mr to relocate to Jamaica in order to join his wife because he would not be able pursue employment opportunities. The record contains no evidence besides counsel's statement and documentation regarding the country conditions in Jamaica that are general in nature and do not substantiate the claim that the applicant would be unable to find work in Jamaica.

If Mr. were to relocate with the applicant to Jamaica, it would be expected that some economic, linguistic and cultural difficulties would arise. No evidence exists that this will impact him at a level commensurate with extreme hardship.

Counsel further states if the applicant is not permitted to remain in the United States Mr would become a single parent, required to care for and support his children. According to counsel the applicant would be unable to do so due to his employment obligations. In the alternative, counsel states that if the children relocate to Jamaica Mr would suffer financial hardship because he would have to maintain two residences.

The U.S. Supreme Court 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.

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 (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.

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 if she were not allowed to remain in the United States. 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 section 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.