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U.S. Citizenship
and Immigration
Services

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file

FILE:



Office: MIAMI, FL

Date:

JAN 13 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is the daughter of a naturalized United States citizen 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 father.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 17, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant has not established extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, published country conditions reports on Jamaica; tax statements for the applicant's father; medical letters for the applicant's father; a statement from the applicant's father; and a W-2 Form for the applicant's father. 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 entered the United States on a photo-substituted passport. *Form I-485, Application to Register Permanent Resident or Adjust Status*. Based on her presentation of a fraudulent document at the port of entry, the applicant is 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 would experience if her waiver request were to be denied is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's father 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 father must be established whether he resides in Jamaica or the United States, as he is not required to reside outside of 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 father travels with the applicant to Jamaica, the applicant needs to establish that her father will suffer extreme hardship. The applicant's father was born in Jamaica. *Form G-325A, Biographic Information sheet, for the applicant*. The record does not address what family members the applicant's father may have in Jamaica. Although the record does not address the amount of time the applicant has resided in the United States, the AAO notes that he naturalized in 1973. *Naturalization certificate*. The applicant's father is 74 years old. *Id.* The applicant's father suffers from morbid obesity, diabetes, and hypertension. *Statement from [REDACTED]*, dated January 21, 2004. The applicant's father has been advised by his physician not to fly due to his poor health. *Id.*; *Statement from [REDACTED]* dated February 28, 2006. According to published country conditions reports, medical care is more limited in Jamaica than in the United States. *Jamaica, Consular Information Sheet, U.S. Department of State*, dated October 25, 2006. Comprehensive emergency medical services are located only in Kingston and Montego Bay; smaller public hospitals are located in each parish. *Id.* Ambulance service is limited both in the quality of emergency care and in the availability of vehicles in remote parts of the country. *Id.* Doctors and hospitals often require cash payment prior to providing services. *Id.* The AAO also notes that, according to the U.S. Department of State, U.S. Medicare and Medicaid programs do not provide payment for medical services outside the United States. *Consular Information Sheet – Medical Insurance, U.S. Department of State*, dated November 14, 2006. Additionally, the submitted country conditions reports note that large sections of the population in Jamaica continued to live in poverty. Jamaica: Amnesty International's Human Rights Concerns. Jamaican society also continued to

suffer from a high level of violence. *Id.* When looking at the aforementioned factors, specifically the amount of time the applicant's father has lived in the United States, his age, his poor health as documented by a licensed healthcare professional, and the lack of adequate medical care in Jamaica as documented by published country conditions reports, the AAO finds that the applicant has demonstrated extreme hardship to her father if he were to reside in Jamaica.

If the applicant's father resides in the United States, the applicant needs to establish that her father will suffer extreme hardship. As previously noted, the applicant's father suffers from morbid obesity, diabetes, and hypertension. *Statement from [REDACTED]*, dated January 21, 2004. The applicant's father has been advised by his physician not to fly due to his poor health. *Id.*; *Statement from [REDACTED]*, dated February 28, 2006. The applicant's father states that the applicant is the only living relative who could take care of him and his wife when they need it. *Statement from the applicant's father*, undated. Counsel asserts that the wife of the applicant's father is ailing and that it is becoming more and more difficult for her to care for him. *Attorney's brief*, dated November 14, 2006. The AAO notes that the applicant lives in Miami, Florida while her father lives in Natick, Massachusetts. *Form G-325A, Biographic Information sheet, for the applicant*. Counsel for the applicant asserts that the fact that the applicant resides in another state does not mean that she cannot be there for her father in his time of need. *Attorney's brief*. Counsel asserts that if the applicant were removed from the United States, she would not be able to provide her father with any care. *Id.* The medical letters indicate the applicant's father's serious medical conditions, but they do not indicate their impact on the applicant's father's daily activities, other than not to travel by air. There is nothing in the record that documents the amount or type of care that the applicant's father requires, nor that his wife's health is deteriorating, and that she will be unable to care for him in the future, as claimed by counsel. The record also does not elaborate on what type of care the applicant currently provides to her father from Miami that she would no longer be able to provide from Jamaica. The record does not document whether the applicant provides any financial assistance to her father from the United States and whether she would be able to continue to do so from Jamaica. 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).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.