

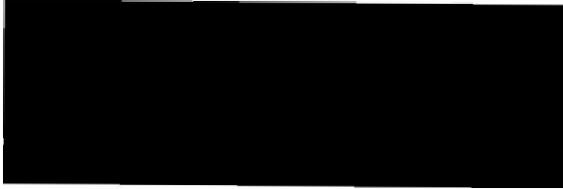
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Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
and Immigration
Services



H12

FILE: [REDACTED] Office: BALTIMORE Date: JUL 28 2009

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.

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
John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 with her U.S. citizen husband and three children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 5, 2007.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated June 5, 2007.

The record contains a brief from counsel in support of the appeal; reports on conditions in Guyana and Jamaica; a psychological evaluation of the applicant's husband; documentation relating to the applicant's husband's regular expenses; birth records for the applicant, the applicant's husband, and the applicant's children; a copy of the applicant's passport; tax records for the applicant's husband; employment and compensation documentation for the applicant and her husband; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's husband's passport; a statement from the applicant's husband; a copy of the applicant's mother's naturalization certificate, and; information regarding the applicant's entry to the United States using a fraudulent passport. 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 April 16, 1992 using a fraudulent passport and visa, thus she procured entry by fraud and misrepresentation. Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

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. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband or mother. 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).

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 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (Citations omitted).

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated June 5, 2007. Counsel notes that the applicant's husband is a native of Guyana and naturalized U.S. citizen. *Id.* at 1. Counsel indicates that the applicant married her husband on February 16, 2004 and that they have three U.S. citizen children born in 1998, 2002, and 2006. *Id.*

Counsel explains that the applicant's husband has no ties to Jamaica, and that his mother resides in the United States. *Id.* at 2. Counsel states that denial of the present application will require the applicant's husband to choose between raising his three children alone in the United States or relocating with his family to Guyana or Jamaica. *Id.* Counsel asserts that the applicant's husband will experience extreme hardship regardless of where he chooses to reside. *Id.* at 3.

Counsel contends that the applicant's husband will endure significant economic hardship should the applicant depart the United States. *Id.* Counsel references the applicant's husband's household expenses and provides that he does not earn sufficient income to meet his and his children's needs without the applicant's assistance. *Id.* Counsel explains that poverty is widespread in Guyana and

Jamaica and that the applicant and her husband would face difficulty securing employment in either country. *Id.*

Counsel references a psychological evaluation of the applicant's husband conducted by a clinical psychologist, [REDACTED]. *Id.* at 2-4. Counsel explains that [REDACTED] found that the applicant's husband has a reading disability that renders him functionally illiterate. *Id.* at 3-4. Counsel asserts that this disability will further impact the applicant's husband's access to employment. *Id.* at 4.

[REDACTED] tested the applicant's husband and found his reading skill to be at the 6.8-year-old level and the 1.9 grade equivalent. *Report from [REDACTED]* dated September 15, 2006. [REDACTED] stated that the applicant's husband's performance is consistent with individuals who are functionally illiterate but can perform elementary counting. *Id.* at 4. [REDACTED] stated that the applicant's husband has always relied on females to assist him due to his disability, and that he currently depends on the applicant. *Id.* He provided that the applicant's husband works at a fast-food restaurant with his sister-in-law who helps him. *Id.* at 3. [REDACTED] explained that the applicant's husband would encounter severe hardship should he raise his children alone, as he would have difficulty with basic tasks such as helping them with their homework and properly reading medication requirements for his asthmatic daughter. *Id.* at 4-5. [REDACTED] stated that the applicant's husband's disability is lifelong, not a consequence of the applicant's immigration difficulties. *Id.* at 5.

The applicant's husband stated that he and his children will endure significant emotional hardship if the applicant departs the United States. *Statement from the Applicant's Husband*, dated October 19, 2005. He provided that his children will endure hardship should they be compelled to adapt to an unfamiliar country. *Id.* at 1. He stated that he would be unable to afford daycare and his family's other economic needs in the applicant's absence. *Id.* at 2. The applicant's husband explained that he and the applicant have little ties to Jamaica and that they would have a lower standard of living there. *Id.* He added that his children would lose access to the benefits of residence in the United States such as educational opportunities should they depart. *Id.*

Upon review, the applicant has shown that her husband will experience extreme hardship should she be prohibited from remaining in the United States. The record contains references to the applicant's husband's reading disability. It is reasonable that this disability will create hardship for the applicant's husband that is not commonly experienced by the spouses of individuals who are compelled to depart the United States.

The applicant's husband's disability impacts his access to further employment. The applicant has submitted sufficient evidence and explanation to show that her husband's current income is not adequate to meet his household's needs including those of his three children. Should he remain in the United States and care for his children, he would require additional income and likely childcare services. The AAO finds that the applicant's husband would face significant economic hardship in the applicant's absence.

The applicant's husband has expressed that he would endure emotional hardship should he be separated from the applicant. The applicant's husband's emotional hardship can be distinguished

from that which is ordinarily experienced when spouses are separated due to his reliance in her as a result of his reading disability.

The applicant's husband expressed that he will experience hardship as a result of his children's suffering if they are separated from the applicant. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. The AAO gives due consideration to hardship the applicant's husband would face due to his children's hardship.

All elements of hardship to the applicant's husband, should he remain in the United States without the applicant, have been considered in aggregate. The applicant has shown by a preponderance of the evidence that her husband will experience extreme hardship if he remains in the United States without her.

The applicant has established that her husband will experience extreme hardship if he relocates abroad to maintain family unity. It is again noted that the applicant's husband's reading disability has a significant impact on his employment opportunities. The record supports that, should the applicant's husband relocate to Jamaica, he would face significant economic hardship. The literacy rate in Jamaica is 87.9 percent, thus the applicant's husband would fall in a small minority of individuals who do not read or write. *U.S. Central Intelligence Agency, The World Factbook: Jamaica*, updated May 31, 2007. Unemployment in Jamaica is high, with the majority of jobs concentrated in the services sector, thus the applicant's illiteracy would hinder him in gaining a position. *Id.* The applicant's husband's economic hardship would be compounded due to his and the applicant's need to support their three children. The report from [REDACTED] reflects that the applicant's husband has the particular need to work with an individual who is sensitive to his reading ability and assists him. His sister-in-law currently satisfies this need in the fast-food restaurant where they work. The applicant's husband would have challenges securing a similar arrangement, and he would experience emotional hardship due to relinquishing his current employment situation.

Reports on conditions in Jamaica support that the applicant's husband's reading disability would impact his assimilation into Jamaica. It is observed that the applicant's husband is not a native of Jamaica and he has no ties there, thus he would face the challenge of adapting to a new culture without a support network. The applicant's husband would face general challenges encountered by all Jamaicans such as fewer economic and educational opportunities.

The applicant's children would face hardships should they relocate to Jamaica such as the need to adapt to an unfamiliar culture and school system. The applicant's husband would share in the challenges of his children.

Considering all elements of hardship in aggregate should the applicant's husband relocate to Jamaica, the applicant has shown by a preponderance of the evidence that her husband will

experience extreme hardship. Thus, the applicant has shown by a preponderance of the evidence that denial of the present waiver application will result in extreme hardship to her U.S. citizen husband. Section 212(i)(1) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States using fraud and misrepresentation. The applicant remained in the United States for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen husband would experience extreme hardship if she is prohibited from remaining in the United States; the applicant's U.S. citizen children will experience hardship if the applicant is compelled to depart the United States, and; the applicant has cared for her U.S. citizen children and cultivated a strong family unit.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained.