identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: PROVIDENCE, RI Date: JAN 07 2010

IN RE: [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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Providence, Rhode Island, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). He is the spouse of a Lawful Permanent Resident (LPR) and has two U.S. citizen children The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, or that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service May 14, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) failed to consider all the relevant factors in the applicant's case and, further, did not consider them in the aggregate. She contends that the applicant's spouse and children will suffer extreme hardship due to the exclusion of the applicant.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 . . . .

The record indicates that the applicant entered the United States with a B-2 nonimmigrant visa in October of 1987. He subsequently obtained a counterfeit "Processed for I-551" stamp in his passport, which he used to obtain a social security number for employment purposes. The Field Office Director concluded that the applicant was inadmissible under Section 212(a)(6)(C) of the Act for having obtained an immigration benefit through fraud or the willful misrepresentation of a material fact.

Although the applicant used a counterfeit I-551 stamp in his passport to obtain a social security number in order to seek employment, seeking employment is not a benefit as defined under the Act. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). As the applicant did not use the fraudulent stamp in his passport to seek an immigration benefit, he is not inadmissible under section 212(a)(6)(C) of the Act on this basis. *See Matter of D-L- & A-M-*, 20 I&N 409 (1991)(holding that an alien is not inadmissible for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien attempted to use the fraudulently procured documents to enter the United States.)

However, the applicant is inadmissible under section 212(a)(6)(C) for misrepresentations related to obtaining his nonimmigrant visa to come to the United States in 1987. The record contains transcripts from a previous immigration proceeding in which the applicant testified before an immigration judge that, at the time of his nonimmigrant visa interview, he lied to a Department of State consular officer about the length of his intended stay in the United States, stating that he was planning a visit of 11 days when it was his intention to remain permanently in the United States. As such, the applicant is inadmissible under section 212(a)(6)(C) of the Act for having obtained admission to the United States through fraud or the willful misrepresentation of a material fact.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the lawfully resident spouse of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or

in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains, but is not limited to, counsel's brief; statements from the applicant and his spouse; a copy of the section on Haiti from Country Reports on Human Rights Practices - 2006, published by the U.S. Department of State; a copy of the section on Haiti from the CIA World Factbook; a copy of the section on Haiti from Amnesty International's Report 2006; a copy of a mortgage statement for the applicant's home; birth certificates for the applicant's children; a copy of the applicant and his spouse's marriage certificate; bank statements; tax returns; school records for the applicant's children and W-2 forms for the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the applicant's family has a home and a mortgage, which they would not able to pay without the applicant's help, that the applicant's marriage would not likely survive the separation, that the applicant's children would have to give up their private school, and that the applicant's spouse would have the additional burden of having to support her husband as he would be unable to find employment in Haiti. Counsel further states that the applicant's children need their father at this developmental stage of their lives. The applicant's spouse asserts that she would be devastated if the applicant were removed from the United States, that she and her children depend on the applicant, and that their hopes and dreams would be shattered if the applicant were removed. The applicant's spouse states that she works at night and that the applicant stays with their children in the evenings. She asserts that they would not be able to afford their house without the financial assitance of the applicant, and that they would all experience emotional and psychological shock if the applicant were removed.

The AAO acknowledges the statements and sentiment of the applicant's spouse. The record, however, does not contain any documentary evidence that demonstrates the extent of the emotional hardship she would experience in the applicant's absence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record also fails to provide sufficient evidence that the applicant's spouse would have to support the applicant if he were returned to Haiti. While the record establishes that the applicant would return to a country where 80 percent of the population lives below the poverty line and two-thirds of the labor force are not employed in formal jobs, the AAO also notes that country conditions materials submitted by the applicant indicate that there is a shortage of skilled labor in Haiti and that the applicant's Form G-325A, Biographic Information, shows him to be skilled as a machine operator. Accordingly, there is insufficient evidence that the applicant would be unable to find employment in Haiti and require financial support from his spouse.

The record also fails to document counsel's assertions with regard to the financial hardship of the applicant's spouse. The applicant's tax return for 2006 indicates that of the approximately $51,640 claimed in income by the applicant and his spouse, nearly $31,500 was earned by the applicant's spouse, an income that places her and her two children above the 2009 federal poverty guideline of $18,310 for a family of three. Further, while the record contains documentation that establishes the

applicant's monthly mortgage payment, it offers no other evidence of the financial obligations or strains faced by the applicant's spouse, e.g., household expenses, monthly or annual financial obligations, accrued debt or impending cessation of utilities or other services. Even in a light most favorable to the applicant, the sale of the family's home and the lowering of their standard of living would not constitute extreme hardship. *See Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985 (affirming that a loss on the sale of a home and the loss of employment and its benefits did not constitute extreme hardship, but were normal consequences of removal). As such, the record does not establish that the applicant's spouse will experience extreme hardship if the applicant is removed to Haiti and she remains in the United States.

While the AAO notes the claims of harm to the applicant's children as a result of their separation from the applicant, it observes that, as previously discussed, they are not qualifying relatives for the purposes of a 212(i) waiver proceeding. In that the record does not establish through documentary evidence how any hardship they would experience as a result of their father's return to Haiti would affect their mother, the only qualifying relative, the AAO will not consider their hardship in reaching its decision on the waiver application.

The applicant must also establish extreme hardship to his spouse if she relocates to Haiti with him. On appeal, counsel states that the economic and political situation in Haiti is appalling, that the applicant's spouse has resided in the United States for 15 years, that her children were born in the United States and have never known anyplace else, and that, given the terrible conditions in Haiti, it would constitute extreme hardship for her and her children, ages 11 and 15 at the time of the application, to relocate there. The applicant's spouse states that she and her children would suffer terribly if they relocated to Haiti and that her husband has made it clear that he would not want them to live in Haiti because of all the problems. To establish conditions in Haiti, the applicant has submitted copies of the sections on Haiti from Department of State's Country Reports on Human Rights Practices – 2006, the CIA World Factbook and Amnesty International's Report 2006. These publications document the poor human rights record and violence in Haiti. The AAO also notes that, on July 17, 2009, the Department of State issued a travel warning for Haiti based on the potential for politically-motivated violence, which remains in effect. Based on the record before it, the AAO finds that the applicant has established that relocation to Haiti would constitute extreme hardship for his spouse.

However, as the applicant has failed to demonstrate that his spouse would also suffer extreme hardship if she remained in the United States without him, the record does not support a finding that the applicant's spouse would face extreme hardship if he is refused admission. The AAO acknowledges that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility. The record, however, fails to distinguish her hardship from that commonly associated with removal or exclusion and it does not, therefore, rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C)(i) of the Act. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.