

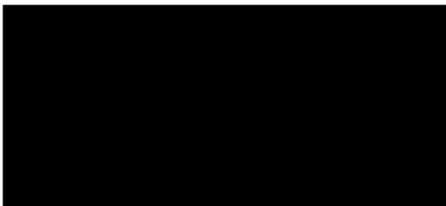
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
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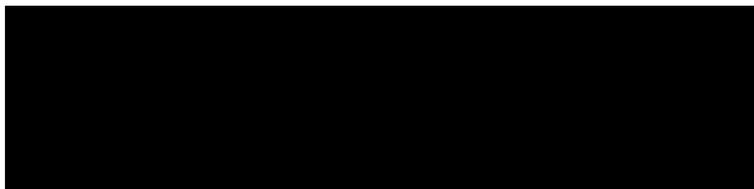
Office: MEXICO CITY (KINGSTON) Date: APR 21 2010

IN RE: Applicant:



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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Kingston, Jamaica, 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 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 reside in the United States with her U.S. citizen mother.

The officer-in-charge 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 Officer-in-Charge*, dated July 11, 2007.

On appeal, counsel for the applicant contends that the applicant's mother will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, dated September 11, 2007.

The record contains a brief from counsel; a copy of a birth record for the applicant; a copy of the applicant's mother's naturalization certificate; tax, income, and employment records for the applicant's mother, including letters from her employers; an evaluation of the applicant's mother conducted by a licensed certified social worker; medical documentation for the applicant's mother; statements from the applicant's mother and her friend, and; documentation relating to the applicant's attempted entry to the United States using a fraudulent visa. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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, in pertinent part, 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 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 [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 on August 16, 2002 the applicant attempted to enter the United States using an altered B-1/B-2 nonimmigrant visa. The applicant testified under oath that she obtained the visa through her step-brother and another individual. *Record of Sworn Statement*, dated August 16, 2002. Upon applying for an immigrant visa at the United States Embassy in Kingston, Jamaica on September 27, 2005, the applicant indicated that she did not know that it was wrong to substitute her photograph on a visa for that of the true owner. *Visa Interview Notes*, at 2, dated February 6, 2006. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission by fraud or willful misrepresentation. 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 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 to a qualifying relative. 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).

The applicant's mother stated that she raised the applicant as a single parent, and that she struggled to provide financial and emotional support, as well as a proper upbringing. *Statement from the Applicant's Mother*, dated October 10, 2005. She provided that having her family separated is causing her emotional anxiety, stress, and frustration. *Id.* at 1. She noted that she was scheduled for surgery on her left hand to remove a cyst, and that her doctor determined she may have difficulty functioning effectively after the surgery. *Id.* She expressed that she wishes to have her family with her to help her physically and emotionally. *Id.*

The applicant's mother stated that she owns her home in the United States and that her foundation is in the country. *Report from [REDACTED]*, at 16, dated August 6, 2007. She indicated that conditions in the United States are more favorable than in Jamaica, including superior opportunities for education, health care, and quality of life. *Id.* at 16-17. She asserted that having her family members who currently reside in the United States return to Jamaica would create extreme hardship

for them. *Id.* at 17. She stated that her chronic health conditions would jeopardize her life in Jamaica. *Id.* She added that she would endure emotional and financial hardship in Jamaica. *Id.*

The applicant provides an evaluation of her mother conducted by a licensed certified social worker, [REDACTED]. [REDACTED] indicates that he evaluated the applicant's mother in a single interview on August 6, 2007 for the purpose of this proceeding. *Report from [REDACTED]* at 1. [REDACTED] states that the applicant "provides essential and irreplaceable physical, emotional, and instrumental care and love for her mother . . . and other family members, including her extremely ill grandmother. *Id.* at 2. [REDACTED] reports that the applicant's mother grew up in Jamaica in difficult circumstances, and that she has a long history of depression, trauma, and anxiety. *Id.* [REDACTED] states that the applicant's mother is overwhelmed helping care for her two adult children and the applicant's grandmother. *Id.* [REDACTED] posits that the applicant's continued absence from the United States places her mother's and grandmother's lives in danger or at risk for serious health and safety issues. *Id.* [REDACTED] states that the applicant's mother has endured the deaths of her sister, nephew, and grandmother, and that she needs the applicant's care and support. *Id.*

[REDACTED] reports that the applicant's mother immigrated to the United States to be with the applicant's grandmother, who is extremely ill due to ovarian cancer, diabetes, and cardiac and pulmonary issues. *Id.* [REDACTED] asserts that the applicant's grandmother wishes to have the applicant assist her. *Id.*

[REDACTED] notes that the applicant's sister and brother reside in the United States as lawful permanent residents. *Id.*

[REDACTED] indicates that the applicant's mother has significant financial responsibilities for herself and the applicant's grandmother, and that the applicant would assist her mother financially should the applicant reside in the United States. *Id.* at 2-3.

The applicant submits medical documentation for her mother. The applicant's mother suffered an injury to her foot when a box fell on it in a store. *Letter from [REDACTED]* dated April 17, 2007. [REDACTED] provided care for the applicant's mother and initially stated his impression that she had Reflex Sympathetic Dystrophy (RSD), for which he prescribed medication and physical therapy. *Id.* at 1-2. [REDACTED] subsequently stated that he made his diagnosis based on swelling and allodynia, "all caused by what appeared to have been a minor accident." *Subsequent Letter from [REDACTED]*, dated May 1, 2007. He provided that an MRI of the applicant's mother's left foot did show swelling, "but typical diagnosis of MRI RSD was not made." *Id.* at 1. [REDACTED] ordered diagnostic procedures, but a report from [REDACTED] indicates that a bone scan revealed no findings suggestive of RSD. *Letter from [REDACTED]* at 2; *Diagnostic Report from [REDACTED]*, dated May 3, 2007. The applicant provided a letter from a physical therapist, [REDACTED], that shows that her mother received physical therapy for RSD, and that RSD is a painful neurological problem. *Report from Physical Therapist*, dated July 27, 2007.

The applicant provides a letter from two of her mother's employers who state that the applicant's mother was in an accident that caused her to undergo physical therapy that impacted her work schedule. *Letter from the Applicant's Mother's Employers*, dated July 27, 2007. The applicant's

mother's employer noted that the applicant's mother missed three weeks of work due to the accident. *Letter from the Applicant's Mother's Employer*, dated June 15, 2007.

On appeal, counsel contends that the applicant's mother will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 2. Counsel asserts that the applicant's mother will endure hardship if she relocates to Jamaica to join the applicant due to harsh conditions she previously suffered there and the fact that she cares for the applicant's grandmother in the United States. *Id.* at 4. Counsel indicates that health services are inadequate in Jamaica and that the applicant's mother would face additional hardship due to a lack of mental health care there. *Id.* at 7. Counsel states that the applicant's grandmother cannot live alone and she depends on the applicant's mother for activities of daily living. *Id.* at 4-5.

Counsel discusses the applicant's mother's foot injury, and reiterates [REDACTED] finding that she suffers from chronic depression. *Id.* at 6. Counsel contends that the applicant's mother depends on the applicant for almost all of her psychological needs, and that the applicant's absence has caused her mother terrible sadness and grief. *Id.*

Upon review, the applicant has not shown that her mother will endure extreme hardship should the present waiver application be denied. The applicant has not established that her mother will suffer extreme hardship should she remain in the United States without her. The applicant presents evidence to support that her mother has suffered health problems related to an injury to her foot. However, the applicant has not provided a clear account from a medical professional regarding the impact the applicant's mother's injury has on her ability to perform common tasks, or an opinion regarding her likelihood and degree of recovery.

Counsel asserts that the applicant's mother was diagnosed with RSD. However, the medical documents in the record show that [REDACTED] initially stated an opinion that the applicant's mother may have RSD, yet subsequent tests concluded that there was no finding of the condition. [REDACTED] commented that the applicant exhibited swelling and allodynia, "all caused by what appeared to have been a minor accident." *Subsequent Letter from [REDACTED]* at 1. The documentation from the physicians who treated and evaluated the applicant's mother's injury does not establish that she suffers from a long-term condition, or that she has been unable to make a full recovery. The applicant's mother's employer indicated that she missed three weeks of work. While this fact supports that the applicant's mother sustained an injury that required care and recovery, it also supports that she was able to return to work after a three-week period. The applicant has not provided a statement from her mother regarding the ongoing impact, if any, the injury has on her ability to perform common functions.

The applicant's mother stated on October 10, 2005 that she was scheduled for surgery on her left hand to remove a cyst, and that her doctor determined she may have difficulty functioning effectively after the surgery. However, the applicant has not submitted any medical documentation to support this assertion. In his letter dated April 17, 2007, [REDACTED] indicated that the applicant's mother's medical history is "[n]egative for any medications and operations." *Letter from [REDACTED]* at 1. [REDACTED]'s statement supports that the applicant's mother did not have surgery on her left hand. The applicant has not shown that her mother experiences difficulty with her hand due to a cyst or surgery.

Accordingly, the applicant has not shown that her mother requires physical assistance due to health problems.

The applicant's mother states that she is close with the applicant, and that she will endure emotional hardship if the applicant remains outside the United States. The record supports that the applicant's mother has resided apart from the applicant for a lengthy duration. The applicant's mother was admitted as a lawful permanent resident on June 1, 1996, and the record does not show that she has resided outside the United States since that date. The applicant has not shown that her mother has suffered unusual emotional challenges in the approximately 14 years that they have resided apart. As the applicant's mother has two other adult children who reside in the United States as lawful permanent residents, she has other immediate relatives on whom she may call for emotional support or assistance. The applicant has not asserted or shown that her brother and sister are unavailable to help and support her mother if needed.

The AAO has carefully examined the report from [REDACTED]. It is noted that the report was generated for the purpose of this proceeding based on a single interview with the applicant's mother, thus it does not represent treatment for a mental health disorder or an ongoing relationship with a mental health professional. It is further noted that [REDACTED] references facts for which there is no documentary evidence in the record, including financial and mortgage information, the medical history of the applicant's grandmother, as well as the deaths of the applicant's mother's relatives. [REDACTED] has not established a basis for his independent knowledge of these facts, and his unsupported assertions do not constitute evidence. [REDACTED] discusses the applicant's mother's dependence on the applicant, yet conspicuously missing from his analysis is information about the applicant's mother's relationships with her two other adult children who are lawful permanent residents in the United States. The AAO finds [REDACTED] report instructive regarding the history and challenges of the applicant's mother, yet it does not show that the applicant's mother is without support in the United States such that she must rely on the applicant for her emotional needs, or that she is enduring unusual psychological challenges.

The AAO acknowledges that the separation of a parent from an adult child often results in emotional hardship. However, the applicant has not distinguished her mother's emotional challenges from those that are commonly experienced when a parent resides apart from a daughter due to inadmissibility. Federal court and administrative 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, 468 (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.

The record contains references to the applicant's grandmother's health, and the fact that the applicant's mother cares for her grandmother. However, the applicant has not provided any medical

documentation to support that her grandmother has ovarian cancer, diabetes, or cardiac and pulmonary problems. The applicant has not provided adequate evidence to show that her mother is experiencing significant hardship due to caring for her grandmother, or that the applicant's presence would alleviate any burden on her mother.

asserted that the applicant's mother will benefit from the applicant's financial assistance. However, the applicant has not provided an account of her mother's expenses. Tax and earnings documentation shows that the applicant's mother earned \$10,351 in 2003, \$84,178 in 2004, \$65,058 in 2005, and \$45,000 in 2006. As noted above, a statement from the applicant's mother's employer indicates that she returned to work three weeks after her injury, thus it appears that she is capable of continuing her employment. The applicant has not shown that her mother lacks sufficient financial resources to meet her needs in the applicant's absence.

All elements of hardship to the applicant's mother, should she reside in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her mother will suffer extreme hardship should she continue to live separately from her.

The record supports that the applicant's mother will endure extreme hardship should she relocate to Jamaica, including the loss of her consistent employment and related financial challenges, separation from the doctors from who she has received care, challenging conditions in Jamaica, possible separation from her mother and children in the United States, and separation from her community and country where she has resided for at least 14 years. However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As the applicant has not shown that her mother will endure extreme hardship should she remain in the United States, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her mother, as required for a waiver under section 212(i) of the Act.

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

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.