

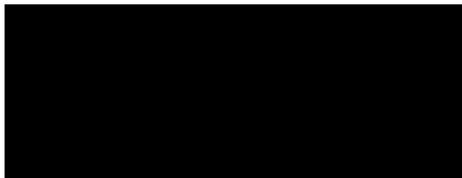
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

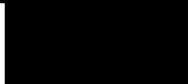


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



HS

FILE: 

Office: NEWARK

Date: FEB 22 2010

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 Field Office Director, Newark, New Jersey denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant is a native and citizen of Haiti. In a decision dated September 16, 2009, the field office director found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore 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).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with her father. The field office director also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. On appeal, counsel submitted a brief.

The record contains, among other documents, statements from the applicant, statements from the applicant's father, a letter from a medical doctor, a letter from a psychiatrist, employment verification letters, Form W-2 Wage and Tax Statements, and tax returns,

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Evidence in the record shows that the applicant attempted to be admitted to the United States on November 4, 1998 at the Luis Munoz Marin International Airport in Puerto Rico by presenting a photo-substituted passport and visa bearing the name [REDACTED] thus misrepresenting herself to be [REDACTED]. Traveling with her was her daughter, [REDACTED]. Another photo-substituted visa in the passport represented her daughter to be [REDACTED]. Although the applicant asserted, in a statement dated July 27, 2009, that she admitted to her true name in secondary inspection, the AAO notes that, in a sworn statement given on November 4, 1998, the applicant again misrepresented that she was [REDACTED] and that her daughter was [REDACTED].

On appeal, counsel did not contest the applicant's inadmissibility. The AAO therefore affirms the field office director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's father is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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)

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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its

discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant to live outside the United States and 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.

In his statements the applicant’s father stated that his daughter cooks food and delivers it to him twice per week and that he eats the food she delivers throughout the week. He stated that pain in his knees and legs prevents him from cooking for himself. He further stated that the applicant launders his clothing, cleans his room, massages his legs weekly to alleviate his pain, and takes him to church and his medical appointments.

In a letter dated September 28, 2007, [REDACTED], of Newark, New Jersey, stated that the applicant’s father is under his care for hypertension, leg pain, congestive heart failure, osteoarthritis, and diabetes.

In a letter dated October 1, 2007, [REDACTED], a psychiatrist practicing in Hackensack, New Jersey, stated that separating the applicant and her father would cause the applicant’s father to suffer extreme hardship. He based that opinion on the reported closeness of the applicant and her father, and his reliance on her for assistance in activities of daily living.

The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred beginning on January 12, 2010. As a result, Haitians in the United States are unable to return safely to their country. Even prior to the current catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a

travel warning issued on January 28, 2009 the U.S. Department of State noted the extensive damage to the country after four hurricanes struck in August and September 2008 and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State, Travel Warning – Haiti, January 28, 2009.* Based on the designation of TPS for Haitians and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that requiring the applicant's father to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant's father would also experience extreme hardship were he to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's father would experience due to concern about the applicant's well-being and safety in Haiti, a concern that is beyond the common results of removal or inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application approved.