

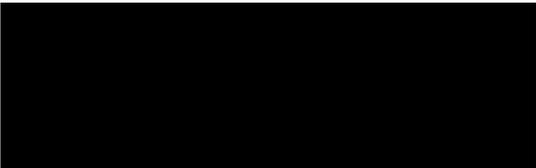
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Office: BALTIMORE

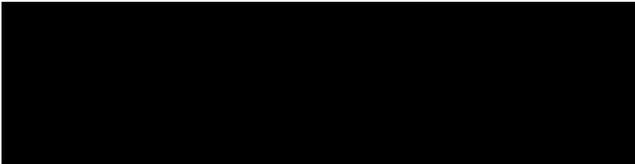
Date: APR 01 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ethiopia who was found to be 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), for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the son of a citizen and a lawful permanent resident of the United States 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 his mother and father.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated August 1, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in finding that the applicant's United States citizen mother would not suffer extreme hardship if the applicant is excluded from the United States. Counsel indicates that the applicant's mother has recently undergone a mastectomy and is now more reliant upon the applicant for emotional and financial support. *Form I-290B*, dated August 11, 2003.

In support of these assertions, counsel submits a brief, dated September 18, 2003. Counsel also provides a letter from the physician treating the applicant's mother; an affidavit of the applicant; an affidavit of the applicant's mother; a report from a clinical psychologist; a copy of a report addressing country conditions in Ethiopia and a copy of a chart reflecting economy and land use data for Ethiopia. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on November 13, 1993, the applicant attempted to enter the United States using an Ethiopian passport with a valid United States/Canadian border crossing card in the name of another individual. The record further reflects that on December 11, 1993, the applicant attempted to enter the United States using a Canadian citizenship card in the name of another individual.

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

- (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:

- (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.

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 alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's parents. 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 (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.

Counsel contends that the applicant's mother would suffer hardship as a result of relocation to Ethiopia in order to remain with the applicant. Counsel asserts that the applicant's mother is a citizen of the United States who has been living in this country for more than 13 years. *Brief and Supplemental Submission to the Appeal to the Administrative Appeals Unit*, dated September 18, 2003. Counsel indicates that the applicant's mother has significant family ties in the United States and no relatives remaining in Ethiopia. *Id.* Counsel further contends that the medical recovery of the applicant's mother would be compromised in Ethiopia. *Id.* The AAO notes that counsel makes several assertions of hardship imposed on the applicant by return to Ethiopia owing to the deplorable country conditions and the applicant's own significant ties to the United States. *Id.* The AAO reiterates that hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's parents.

Counsel establishes that the applicant's mother will suffer extreme hardship if she returns to Ethiopia or remains in the United States in the absence of the applicant. The AAO acknowledges that the applicant's mother suffers from numerous medical ailments including breast cancer, has undergone surgery and is required to take daily medication to maintain a stable condition. *See Letter from Ralph V. Boccia, MD, FACP*, dated August 7, 2003. *See also Confidential Psychological Evaluation*, dated September 16, 2003. The AAO notes that the applicant assists his mother in remembering to take her medications as prescribed, escorting her to medical appointments and providing general care. *Affidavit of [REDACTED]*, dated August 28, 2003. Further, the AAO finds that the submitted psychological evaluation reveals that the applicant's mother has borne witness to many traumatic events and has experienced high levels of anxiety throughout her life. *Confidential Psychological Evaluation* at 2. The evaluation reveals that the applicant's mother witnessed many horrific events related to the wars and uprisings that plague Ethiopia giving rise to serious panic attacks and Posttraumatic Stress Disorder symptoms. *Id.* The evaluation further indicates that the applicant's mother suffered from a Major Depressive Disorder as a result of the imprisonment of her

husband and her son in Ethiopia. *Id.* The evaluation asserts that with each new episode of depression, the chances for recurrence increase; the evaluation indicates that she has suffered at least two Major Depressive Episodes. *Id.* at 3.

The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's mother would suffer extreme emotional distress if her son were forced to depart from the United States. The suffering experienced by the applicant's mother would surpass the hardship typically encountered in instances of separation because of the atrocities witnessed by the applicant's mother in Ethiopia and her history of psychological problems caused, in part, by separation from family members. In addition, the record demonstrates that the physical ailments suffered by the applicant's mother are negatively impacted by increases in stress. *See Letter from [REDACTED] FACP.*

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's mother and the passage of more than eleven years since the applicant's immigration violations. The unfavorable factors in this matter are the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO notes that the applicant does not appear to have a criminal record in this country.

While the applicant made a willful misrepresentation in order to obtain admission to this country, the AAO notes that over 11 years have elapsed since the applicant's immigration violations. The AAO finds that the hardship imposed on the applicant's mother as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.