

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: KINGSTON, JAMAICA

Date: SEP 20 2005

IN RE:

PETITION: 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 PETITIONER: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and (a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to reside in the United States with his spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and that the applicant had demonstrated a serious disregard for immigration laws. The officer in charge denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated March 29, 2004.

On appeal, the applicant's spouse states that she is pleading for leniency in the applicant's case. She indicates that the applicant has apologized for his prior behavior of 10 years ago. She asserts that she will take responsibility for the applicant in the United States. The applicant's spouse states that she is a working mother and requires the applicant's assistance. *Letter from Maureen Temple*, dated April 20, 2004. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, on November 30, 1991, the applicant attempted to procure admission to the United States by presenting a fraudulent Jamaican passport containing a United States visa to an immigration officer. The record further reflects that the applicant attempted to obtain a United States passport by falsely claiming to be a United States citizen. On January 10, 1994, the applicant was convicted in the United States District Court for the Southern District of Florida for Making a False Statement in Application for Passport. The applicant was sentenced to two months imprisonment and a special assessment of \$50. On October 21, 1994, the applicant was ordered removed from the United States.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

.....

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

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.

(ii) Falsely claiming citizenship. -

(I) In General -

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

.....

(ii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (i).

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(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. 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. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under sections 212(h) and (i) of the Act. 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 (BIA) 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.

The applicant's spouse asserts that her children are now the applicant's stepchildren and that they have grown to love, admire and respect him. *Letter from* [REDACTED]. The AAO notes that the applicant and his spouse were married on August 11, 1994. The record further reflects that the applicant was ordered removed from the United States on October 21, 1994. Therefore, the applicant and his spouse were married for a short period prior to the applicant's departure from the United States. In light of these circumstances, the record fails to reflect that the children of the applicant's spouse developed a relationship with the applicant that results in extreme hardship imposed on them as a result of his absence. The brevity of the marriage between the applicant and his spouse prior to the applicant's departure from the United States also weakens the claim of the applicant's spouse that she suffers financial hardship as a result of the absence of the applicant. The applicant's spouse indicates that her financial resources have been drained in her effort to pay bills, keep a roof over her head and support her children on a single income. *Affidavit of* [REDACTED] dated September 30, 2003. The record fails to establish that these expenses of the applicant's spouse differ from the expenses she experienced prior to her marriage while the applicant was in the United States. Further, the record fails to demonstrate that the applicant is unable to provide financial support to his spouse from a location outside of the United States.

The record makes no assertions regarding family ties outside the United States of the applicant's spouse; the conditions in the country or countries to which the applicant's spouse would relocate and the extent of the ties of the applicant's spouse in such countries. Further, the record makes no assertions regarding significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the applicant's spouse would relocate.

U.S. court 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 AAO recognizes that the applicant's spouse and children endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or children caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and (i) 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.