



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

H2

[REDACTED]

FILE:

Office: ATLANTA, GA
[consolidated therein]

Date: FEB 22 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States. The record indicates that the applicant is married to a naturalized citizen of the United States and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband.

The District Director stated that the applicant was seeking a waiver under section 212(h) of the Act and found that she failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 16, 2005. The AAO notes that the District Director did not state the ground of inadmissibility, but she referred to section 212(h) in her decision, so it assumed the District Director found the applicant inadmissible for a criminal conviction.

On appeal, the applicant, through counsel, argues that the District Director failed to "identify an appropriate ground of inadmissibility." *Brief in Support of Appeal*, filed April 7, 2005. Counsel states that the District Director referred to section 212(h) of the Act, which pertains to grounds of inadmissibility based upon a criminal conviction; however, the applicant submitted court dispositions demonstrating that she has not been convicted of any crimes. *See Motion to Reopen*, filed January 25, 2005. Counsel claims the I-601 waiver was filed for "misrepresentation" under section 212(a)(6)(C)(i) of the Act, not for criminal grounds under sections 212(a)(2)(A)(i)(I) or 212(a)(2)(A)(i)(II). Counsel states the applicant has demonstrated that her spouse would face extreme hardship if she were removed to Jamaica.

The AAO finds that the District Director erred in finding the applicant inadmissible for criminal grounds, since there is no evidence that the applicant has been convicted of a crime. The record of proceedings establishes that the applicant was arrested on June 19, 1997, for theft by shoplifting, but the charge was never prosecuted. *See letter from [REDACTED] Doraville Police Department, Doraville, Georgia*, dated February 15, 2002. However, the AAO does find the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport under a different name.

In the present application, the record indicates that the applicant entered the United States in 1992, fraudulently utilizing a passport under the name of "[REDACTED]." On April 6, 2001, the applicant, using the name "[REDACTED]" married "[REDACTED]" a naturalized United States citizen. On May 4, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) for the applicant, which was approved on May 12, 2003. On April 10, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On or about December 30, 2002, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601). On January 14, 2005, the District Director denied the Form I-485, finding the applicant failed to respond to a request for evidence. On January 24, 2005, the applicant filed a Motion to Reopen the Form I-485 decision. On February 16, 2005, the District Director

denied the motion to reopen, finding insufficient evidence of reversible error, and denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen spouse.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, the applicant's marriage certificate, and a Dekalb County Police Department Statement of Record. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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 Act is inadmissible.

...

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

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 applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 he would face extreme hardship if he relocated to Jamaica in order to remain with the applicant. *See Affidavit of* [REDACTED] dated December 6, 2004. Counsel states the applicant's husband has been a United States "citizen since 1994, and his family ties to Jamaica have steadily diminished." *See Brief in Support of Appeal*, page 4, filed April 7, 2005. The AAO notes that the applicant's husband is a native of Jamaica and has some family ties to Jamaica. The applicant's spouse states his mother, a naturalized United States citizen, "depends on [him]" and he supports the "family with [his] position with the Department of Homeland Security. [He] would not have the opportunity to pursue [his] career in Jamaica." *See Affidavit of* [REDACTED] dated December 6, 2004. The applicant's husband failed to provide any evidence that he could not obtain a job in Jamaica that would support his family. The applicant's husband claims he is suffering from extreme emotional hardship regarding his "wife's status in the United States." *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine what personal issues are affecting the applicant's husband's emotional wellbeing. Counsel cites the poor economic conditions and general instability in Jamaica as reasons that the applicant's spouse cannot return there. *See Brief in Support of Appeal*, page 4, filed April 7, 2005.

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment, access to adequate health care, and close proximity to his mother. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, beyond generalized assertions regarding country conditions in Jamaica, the record fails to demonstrate that the applicant, a trained rehabilitation technician, will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit 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 husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, 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 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 she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.