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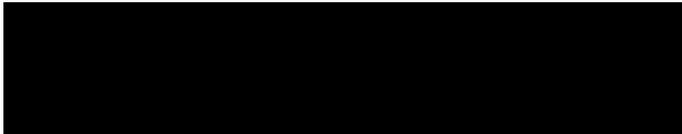
U.S. Department of Homeland Security
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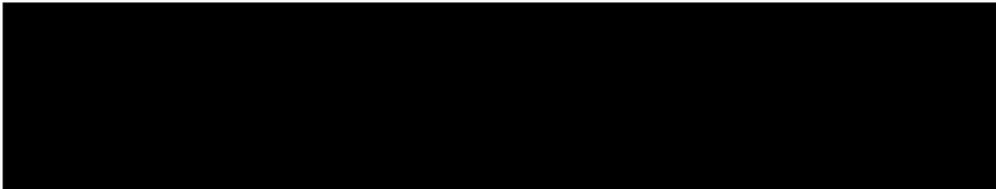
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IN RE:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 having procured entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen 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 spouse and their child.

The 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 Director*, dated May 12, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from counsel; medical letters for the applicant's child and spouse; a statement from the applicant; statements from the applicant's spouse; a certificate of disposition for the applicant; an employment letter for the applicant's spouse; tax statements for the applicant and his spouse; Form W-2s for the applicant and his spouse; an apartment lease; and a utility bill. The entire record was reviewed and considered in rendering this decision.

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

- (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 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 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.

The record reflects that in 1995, the applicant applied for a visitor's visa in Jamaica. At that time he stated his name was "[REDACTED]" and that he was married, when he was not in fact married at that time. *Form I-485, Application to Register Permanent Residence or Adjust Status*. Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of

inadmissibility. Counsel asserts that the alleged misrepresentations in this case were committed by the preparer of the applications for the applicant's passport and visa. *Attorney's brief*. He contends that the applicant was unaware of the consequences of the preparer using the applicant's mother's maiden name and his middle name on these applications. *Id.* Counsel further asserts that there was no attempt on the applicant's part to deceive United States immigration authorities or conceal any material fact. *Id.* While the AAO acknowledges these assertions, it notes that the fact that a third party filled out the applications for the applicant with false information does not insulate the applicant from responsibility, as the applicant himself presented these documents. As such, the AAO finds the applicant to be inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.¹

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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Any hardship to the applicant's child will be considered only to the extent that it affects the applicant's spouse. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Jamaica or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

If the applicant's spouse travels with the applicant to Jamaica, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was a citizen of Jamaica who became a naturalized United States citizen on August 26, 1996. *Naturalization certificate*. The parents of the applicant's spouse were born in Jamaica, but now live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse has lived in the United States since 1982, completing junior high school, high school and some college in the United States. *Statement from the applicant's spouse*, dated June 10, 1999. Over the course of 17 years, the applicant's spouse visited Jamaica once. *Id.* She has only a few

¹ The AAO notes that in 2005, the applicant was convicted of Disorderly Conduct under section 240.20 of the New York Penal Code. Even if this conviction is a crime involving moral turpitude, it would qualify for the petty offense exception and therefore does not render the applicant inadmissible.

distant relatives in Jamaica with whom she basically has no contact. *Id.* She does not have any property or financial dealings in Jamaica. *Id.* The applicant's spouse states that her work experience is based on the system in the United States and it would be extremely difficult for her to obtain employment in Jamaica. *Id.* All of her education credentials and work experience is in the United States. *Id.* Given the different British education system and poor economic development in Jamaica, her opportunity to grow and advance professionally in Jamaica would be very limited. *Id.*

The applicant and his spouse have a six-year old son who was born with DiGeorge Syndrome. *Letter from [REDACTED] M.D., Jamaica Hospital Medical Center, dated June 6, 2006.* The applicant's son also has moderate persistent asthma, T-cell dysfunction, failure to thrive, speech delay, developmental delay, and a dilated aortic root. *Id.* As a result of these health conditions, the applicant's son must be seen regularly by an immunologist, pulmonologist, gastroenterologist, nutritionist, cardiologist, speech therapist, physical therapist, and special educator, as well as his primary care physician. *Id.* The applicant's son is usually accompanied by the applicant on these visits, as the applicant's spouse works full-time. *Id.* The applicant's son will require treatment indefinitely for his asthma and chronic management of his DiGeorge Syndrome and T-cell dysfunction by immunology. *Id.* To help him reach his highest potential, the applicant and his spouse need to continue their attention to their son's medical, educational, and speech-related needs. *Letter from [REDACTED] MS, Genetic Counselor and [REDACTED] MD, Chief, Division of Medical Genetics, Schneider Children's Hospital, dated January 21, 2005.* According to the applicant's spouse, she works full-time while the applicant does not work because he cares full-time for their child. *Statement from the applicant's spouse, dated October 14, 2005.* The applicant states that there is no way their son could obtain the treatment he needs in Jamaica. *Statement from the applicant, dated June 6, 2006.*

Although a U.S. citizen unlawful permanent resident child is not a qualifying relative for this particular case, the AAO, as previously noted, will consider the effect of a child's hardship upon the qualifying relative. In this matter, the AAO acknowledges the significant health condition of the applicant's son and the added responsibilities this condition places upon the applicant's spouse. When looking at the aforementioned factors, specifically the lack of family ties in Jamaica, the length of time the applicant's spouse has resided in the United States, and the significant health condition of the applicant's son as it relates to his spouse, the AAO finds that the applicant demonstrated that his spouse would suffer extreme hardship if she were to reside in Jamaica.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The father of the applicant's spouse lives in Washington, DC while her mother lives in Brooklyn, New York. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* As previously noted, the applicant's son has been diagnosed with DiGeorge Syndrome, a condition in which he has a small deletion on chromosome #22. *Letter from [REDACTED] MS, Genetic Counselor and [REDACTED] MD, Chief, Division of Medical Genetics, Schneider Children's Hospital, dated January 21, 2005.* As a result of his condition, he needs continued attention to his medical, educational, and speech-related needs. *Id.* He must be seen regularly by eight specialists as well as his primary physician. *Letter from [REDACTED] M.D., Jamaica Hospital Medical Center, dated June 6, 2006.* As the applicant's spouse works full-time, the applicant's child is usually accompanied by the applicant on these visits. *Id.* The applicant's spouse notes that their son must regularly attend his medical appointments, and the applicant is the person responsible for this task. *Statement from the applicant's spouse, dated October 14, 2005.* She states that if

the applicant were removed from the United States, there would be no way that she could care for their young son and ensure that he attended his many medical appointments. *Id.* As a result, his condition would deteriorate. *Id.* Should the applicant's spouse stay in the United States without the applicant, the AAO acknowledges the additional and significant responsibilities the applicant's spouse would face in caring for her son full-time. While the record does not address whether the applicant's spouse has additional family members who could assist her, the AAO notes that her child faces serious health problems and requires much more attention than a healthy child. Additionally, at the time of the appeal, the applicant's spouse was pregnant with her and the applicant's second child. *Letter from [REDACTED] M.D., State University of New York Downstate Medical Center, dated June 6, 2006.* The AAO also recognizes the increased responsibilities for the applicant's spouse with the addition of a second child. When looking at the aforementioned factors, particularly the significant health condition of the applicant's child and its impact upon his spouse, and the second child of the applicant's spouse, the AAO finds that the applicant has demonstrated that his spouse would suffer extreme hardship if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, his one criminal conviction for disorderly conduct, periods of unauthorized employment, and his failure to depart the United States at the end of his authorized nonimmigrant stays on December 18, 1997.

The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his long-term and supportive relationship with his spouse, his long-term attention and care to his child, and his payment of taxes.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.