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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: NOV 07 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and the applicant filed a motion to reopen/reconsider. The director granted the motion and affirmed his previous decision. The applicant now appeals this decision to the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant is a native and citizen of Jamaica 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's mother is a U.S. citizen and the applicant is seeking 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 her mother.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on her mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, at 3, dated July 24, 2006.

On appeal, counsel asserts the director abused his discretion in denying the application. *Form I-290B*, received August 25, 2006.

The record includes, but is not limited to, the applicant's statement, the applicant's mother's statement, a medical letter concerning the applicant's mother and the applicant's siblings' statement. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was admitted to the United States in May 1994 with another person's Jamaican passport. As a result of her prior misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's mother, her only qualifying relative, must be established whether she resides in Jamaica or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her mother in the event that she resides in Jamaica. The record reflects that the applicant's mother is 84 years old. *Form I-130*, at 1, received September 27, 2000. The applicant's mother's nurse states that she has been a patient at the Kings County Hospital Geriatric Clinic for the past three years; she has high blood pressure, osteoarthritis, dementia and glaucoma; and her cognitive and visual status has deteriorated in the past few months. *Letter from [REDACTED]*, *GNP-C*, dated June 8, 2006. Considering the applicant's mother's age, serious medical problems and that she has an established patient-physician relationship in the United States, the AAO finds that she would suffer extreme hardship if she were removed from her current environment. Accordingly, the applicant has demonstrated that her mother would suffer extreme hardship if she resided in Jamaica permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her mother in the United States. The applicant's mother's nurse states that she has been a patient at the Kings County Hospital Geriatric Clinic for the past three years; she has high blood pressure, osteoarthritis, dementia and glaucoma; her cognitive and visual status has deteriorated in the past few months; she is unable to manage her multiple medications without supervision; and the applicant is the sole caregiver in maintaining her safety and ensuring her optimal quality of life. *Letter from [REDACTED]*, *GNP-C*. The applicant states that she has been living with her mother since 1996, she has been caring for her since then, she takes her for her doctor's visits, she does virtually all of her household chores; and she nurtures her desire to live. *Applicant's Statement*, at 2, dated June 9, 2006. The applicant's mother states that she her other two daughters are married with families and are hard pressed to provide the type of care that the applicant does. *Applicant's Mother's Statement*, at 2, dated June 12, 2006. The applicant's mother states that the applicant has been her sole-care giver, she would be lost without the applicant's care and separation from the applicant would result in tremendous hardship. *Id.* Based on applicant's mother's medical conditions, age, and the

critical role of the applicant in caring for her mother, the AAO finds that the applicant's mother would suffer extreme hardship if she were permanently separated from the applicant.

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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's misrepresentation and unauthorized stay.

The favorable factors include the presence of the applicant's U.S. citizen mother and two sisters, her lack of a criminal record and extreme hardship to her mother.

The AAO finds that the misrepresentation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.