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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC

[REDACTED]

H2

FILE:

[REDACTED]

Office: NEW YORK, NY

Date: JUL 27 2009

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Haiti 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States 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.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 3, 2006.

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

In support of the waiver, the record includes, but is not limited to, statements from the applicant's spouse; published country conditions information; a medical letter for the applicant's spouse; and a psychological evaluation of the applicant's spouse. 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 the applicant used a false passport to enter the United States. *Form I-601, Application for Waiver of Ground of Excludability*. The applicant is thus inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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 would experience if his waiver request is denied is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. 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 Haiti 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Haiti, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Haiti. *Naturalization certificate*. She is multilingual in French and Creole. *Psychoemotional and Marital Dynamics Assessment from [REDACTED]*, dated June 16, 2006. The applicant has been in the United States since she was 14 years old and she does not think she would adjust to Haiti after all of these years. *Id.* The record does not address what family members the applicant's spouse may have in Haiti. The applicant's spouse has expressed concern about the security situation in Haiti and stated that she would be terrified of living in such a dangerous environment. *Id.* Published country conditions reports included in the record demonstrate that the Haitian government's human rights record is poor. *Haiti, Country Reports on Human Rights Practices – 2005, U.S. Department of State*. Arbitrary and other unlawful deprivation of life perpetrated by state agents and others continued throughout the year. *Id.* The AAO notes that on January 28, 2009 the United States Department of State issued a travel warning for Haiti, advising U.S. citizens against travel to Haiti. *Travel warning for Haiti, United States Department of State*, dated January 28, 2009. The applicant's spouse has also indicated that because the unemployment rate in Haiti has surpassed 40

percent (and it is above 50 percent and 60 percent in many regions), it would be extremely difficult for the applicant to get a job in Haiti that would meet their basic daily needs. *Psychoemotional and Marital Dynamics Assessment from [REDACTED]*, dated June 16, 2006. Furthermore, she asserts that the chances for a woman to get a job are even lower. *Id.* While the AAO does not find the record to offer documentation that supports the applicant's spouse's claims regarding the Haitian economy, it nevertheless finds the applicant, particularly in light of the country conditions in Haiti as documented by reports and a travel warning issued by the United States government, to have demonstrated extreme hardship to his spouse if she were to reside in Haiti.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record demonstrates that the applicant's spouse has lived in the United States for more than 14 years. *Statement from the applicant's spouse*, dated July 24, 2006. While the record does not document what family members the applicant's spouse has in the United States, the AAO notes that the applicant has been reported as having many family members who live in the United States and that the applicant's spouse often visits them. *Statement from the applicant's spouse*, dated February 18, 2005. The applicant's spouse states that the applicant's being outside of the United States would cause her financial hardship. *Id.* She adds that she desperately requires his assistance around the house. *Id.* The AAO notes that the record does not specify why the applicant's assistance is required around the house, nor does the record document how the applicant's spouse would suffer financially if separated from the applicant. The record does not include any documentation to establish the financial situation of the applicant and his spouse. The record also fails to address whether the applicant's spouse works in the United States and the amount she earns as demonstrated through tax statements or W-2 Forms. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's spouse states that she is taking fertility drugs in order to conceive a child and that it is essential for the applicant to remain in the United States so that she may become pregnant. *Statement from the applicant's spouse*, dated February 18, 2005. A letter from [REDACTED], states that the applicant's spouse has been under her care since 1999 and that the applicant's spouse has a hormonal imbalance that makes it difficult for her to become pregnant. *Letter from [REDACTED]*, dated October 21, 2005.

The applicant's spouse states that her worry over the removal of the applicant has resulted in loss of appetite and sleepless nights, and that she is on the verge of a nervous breakdown. *Statement from the applicant's spouse*, dated July 24, 2006. The applicant's spouse's emotional state has been evaluated by a licensed psychopathologist who finds that her mental and physical health have been seriously affected as a result of her potential separation from the applicant and that she is experiencing active anxious-depressive symptoms. *Assessment from [REDACTED] LMHC*, dated June 16, 2006. According to the psychopathologist, the applicant's spouse is suffering from adjustment disorder with mixed anxiety and depressed mood, and the standardized psychological tests he administered placed her within the severe range of classification for anxiety and depression. When looking at the aforementioned factors, particularly the mental health condition of the applicant's spouse as documented by a licensed healthcare professional, the AAO

finds that the applicant has demonstrated extreme hardship to his spouse 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, and his extended unlawful residence in the United States.

The favorable and mitigating factors are the applicant's U.S. citizen spouse and the extreme hardship she would experience if his waiver application was not approved.

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.