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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

H2

FILE: [REDACTED] Office: ATLANTA

Date: JUL 29 2009

IN RE: Applicant: [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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. **The waiver application will be approved. The matter will be returned to the acting district director for continued processing.**

The applicant is a native and citizen of Haiti. The record indicates that in October 1999, the applicant procured entry to the United States by presenting a fraudulent passport and visa. The applicant was thus found to be inadmissible 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 and/or willful misrepresentation. The applicant 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 her U.S. citizen spouse and child, born in 2001.

The acting district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated May 9, 2007.

In support of the appeal, counsel submits a brief, dated June 5, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible...” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors

relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative and hardship to the applicant and/or their U.S. citizen child cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse asserts that he will suffer extreme hardship were he to reside in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship he has with the applicant and due to the fact that he would be forced to raise a young child without the mother's presence. *Affidavit of* [REDACTED] dated June 4, 2007. Counsel notes that the applicant's spouse would not permit having his child relocate to Haiti to reside with the applicant due to his concerns with respect to the problematic country conditions in Haiti, as further discussed below. *Brief in Support of Appeal*, dated June 5, 2007. Moreover, the applicant's spouse contends that he and his child would constantly be stressed and anxious about the applicant's safety while in Haiti. *Supra* at 1. Finally, the record establishes that the applicant's spouse is gainfully employed and would face difficulty in supporting his family while having to raise their child on his own. *Letter from* [REDACTED] dated December 23, 2005.

Based on the turmoil in Haiti, as confirmed by the U.S. Department of State and discussed in detail below, the applicant's spouse's fears and anxieties with respect to his wife's safety and well-being, his awareness that his young child will be separated from her mother and that the child's hardship based on said separation would cause him, as her father, extreme hardship, the AAO finds that the hardship the applicant's U.S. citizen spouse faces due to the applicant's inadmissibility goes significantly beyond that normally suffered upon the separation of families due to inadmissibility.

As such, based on the record, the AAO has determined that the applicant's U.S. citizen spouse would experience extreme hardship if he remained in the United States while the applicant relocated to Haiti.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse references, and counsel documents, the problematic country conditions in Haiti, including political and civil turmoil. *Supra* at 1. The AAO notes that a travel warning has been issued by the U.S. Department of State, confirming the applicant's spouse's statements. The warning states in pertinent part:

The State Department warns U.S. citizens of the risks of travel to Haiti and recommends deferring non-essential travel until further notice. This Travel Warning replaces the Travel Warning dated April 30, 2008, and is being issued to remind American citizens of the destructive impact of a series of hurricanes in 2008, to provide updated information on country conditions, and to alert Americans to ongoing security concerns. Travelers are strongly advised to thoroughly consider the risks before traveling to Haiti and to take adequate precautions to ensure their safety if traveling to Haiti.

During the 2008 hurricane season, four tropical storms struck Haiti, which resulted in torrential rains, extensive flooding and mudslides, and hundreds of reported casualties. The lack of governmental infrastructure and rescue services combined with impassable roads and bridges severely hindered rescue and relief efforts. In late August and September 2008, heavy rains and gale-force winds from hurricanes Fay, Gustav, Hanna, and Ike pelted the country's coastline and interior causing heavy flooding and mudslides. In the aftermath of the storms, eight of the country's nine departments reported significant physical and economic devastation. The storm damage came on the heels of the civil unrest in April 2008. Conditions in Haiti may occasionally limit Embassy assistance to American citizens to emergency services.

In early April 2008, there were violent demonstrations, looting, transportation disruptions, and as many as seven reported deaths in Les Cayes and Port-au-Prince. Some American citizens were temporarily stranded in isolated locations and could not safely travel until calm was restored. The absence of an effective police force in many areas of Haiti means that, when protests take place, there is potential for looting, the erection of intermittent roadblocks set by armed protestors or by the

police, and an increased possibility of random crime, including kidnapping, carjacking, home invasion, armed robbery and assault.

U.S. citizens traveling to and residing in Haiti despite this warning are reminded that there also is a chronic danger of violent crime, especially kidnappings. Most kidnappings are criminal in nature, and the kidnappers make no distinctions of nationality, race, gender, or age. As of January 2009, 25 Americans were reported kidnapped in 2008. Most of the Americans were abducted in Port-au-Prince. Some kidnap victims have been killed, shot, sexually assaulted, or brutally abused. The lack of civil protections in Haiti, as well as the limited capability of local law enforcement to resolve kidnapping cases, further compounds the element of danger surrounding this trend.

Travel is always hazardous within Port-au-Prince. U.S. Embassy personnel are under an Embassy-imposed curfew and must remain in their homes or in U.S. government facilities during the curfew. Some areas are off-limits to Embassy staff after dark, including downtown Port-au-Prince. The Embassy restricts travel by its staff to some areas outside of Port-au-Prince because of the prevailing road and security conditions. This may constrain our ability to provide emergency services to U.S. citizens outside of Port-au-Prince. Demonstrations and violence may occasionally limit Embassy operations to emergency services, even within Port-au-Prince. The UN stabilization force (MINUSTAH) remains fully deployed and is assisting the government of Haiti in providing security.

Travel Warning-Haiti, U.S. Department of State, dated January 28, 2009.

Based on the problematic country conditions in Haiti, as documented by counsel and confirmed by the U.S. Department of State, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Haiti to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the hardships the applicant's U.S. citizen spouse and child would face if the applicant were to relocate abroad, regardless of whether they relocate to Haiti or remain in the United States, the applicant's apparent lack of a criminal record, community ties, payment of taxes, and the passage of more than nine years since the applicant's entry to the United States by fraud and/or willful misrepresentation. The unfavorable factors in this matter are the applicant's entry to the United States by fraud and/or willful misrepresentation and periods of unauthorized presence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's U.S. citizen spouse as a result of her inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on motion and continue to process the adjustment application.