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



U.S. Citizenship
and Immigration
Services

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H12

FILE: [REDACTED] Office: CHICAGO, IL

Date:

MAR 31 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.

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois 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 admission into the United States by fraud or willful misrepresentation on or about June 10, 1992. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined that the applicant failed to demonstrate extreme hardship to his U.S. citizen spouse. The district director notes that only extreme hardship to the applicant's spouse, not hardship to his children can be directly considered in this waiver application. The application was denied accordingly. *Decision of the District Director*, dated September 22, 2005.

On appeal, counsel asserts that the district director ignored detailed explanations of the hardship facing the applicant's spouse as it was presented in her declaration, did not consider the country conditions of Jamaica and ignored the specific facts of the case. *Counsel's Brief*, undated.

The record indicates that on or about June 10, 1992 the applicant attempted to enter the United States at the Miami Port of Entry by presenting a passport and visitor's visa belonging to someone else.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien

experiences due to separation or his children experience is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Jamaica and in the event that she resides in 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.

Counsel states that the applicant's spouse was born and has lived in the Chicago area her entire life. *Counsel's Brief*, undated. He states that her entire family lives in the area and with the recent deaths of her mother and grandmother she feels it is important to stay close to her family. Counsel states that the applicant's spouse has no family ties in Jamaica. Counsel states that because of the applicant's spouse's mother's recent death at forty-seven years old and the death of the applicant's spouse's grandmother, losing the applicant would cause hardship to the applicant's spouse that would rise to the level of extreme. *Id.* The applicant's spouse states that she has lived in the Chicago area her whole life and her entire family resides in Chicago. *Spouse's Affidavit*, dated September 1, 2005. She states that the death of her mother in 1998 from complications from Lupus and then the death of her grandmother in 2001 have made her need to stay in the area, close to her godmother and sisters greater than ever. She states that she and her sisters lean on each other for support and she cannot leave them. The applicant's spouse also states that she has been providing her elderly godmother with both financial and emotional support and if she were to leave the United States she does not know who would care for her. *Id.* The AAO notes that the record includes a death

certificate for the applicant's spouse's mother and programs for both the spouse's mother and grandmother's funeral services. A statement from the applicant's spouse's godmother is also in the record. In her statement the applicant's spouse's godmother states that if the applicant's spouse had to leave the United States it would be a great hardship for her and her sisters because since the death of their mother and grandmother they only have each other. *Godmother's Statement*, dated August 8, 2005. She states that the applicant's spouse is her moral support. *Id.*

In addition, counsel states that the applicant's spouse has steady employment in Chicago and the chances of finding employment in Jamaica are unknown. *Counsel's Brief*, undated. Counsel states that Jamaica's unemployment rate is almost three times higher than the United States and that according to U.S. State Department reports women suffer discrimination in the workplace, often earn less than their male counterparts and general violence and discrimination against women remain problems. *Id.* Counsel submitted the 2004 U.S. Department of State Country Report on Human Rights Practices in Jamaica to support these claims. The record also contains a letter from the applicant's spouse's employer showing that she is employed with Cingular Wireless and has a current salary of \$29,978. *Letter from Spouse's Employer*, dated June 30, 2005. The applicant's spouse asserts that she does not want her daughter growing up in a country where violence against women is accepted and where her children will not have the same opportunities as they do in the United States. *Spouse's Affidavit*, dated September 1, 2005.

Furthermore, counsel states that if the applicant is removed from the United States the applicant's spouse will have to raise two small children on one income and she will not be able to afford visits to Jamaica. *Counsel's Brief*, undated. The applicant's spouse states that if the family is separated their children will be deprived of their father for the rest of their childhood. She states that such separation will cause severe emotional harm. *Spouse's Affidavit*, dated September 1, 2005. She states that her marriage is extremely important to her and it will cause her extreme hardship to raise two children without a father. She states that separation will also cause her extreme financial hardship and that she could not afford all of the family bills without his income. *Id.*

Finally, counsel states that the removal of the applicant will cause poverty, the loss of a stable family unit and the emotional and practical support of her spouse in raising their two children and the loss of hope for their education and future. *Counsel's Brief*, undated.

The AAO finds that the applicant's spouse would suffer extreme hardship as a result of relocating to Jamaica. The applicant's spouse has extensive family ties in the United States and no ties to Jamaica. She also has employment in the United States and according to country conditions she may face discrimination in obtaining employment in Jamaica. In finding that relocation would be an extreme hardship and because the ground of inadmissibility applicable to the applicant has no date of expiration, the AAO also finds that the separation from the applicant, his spouse and children would be permanent. As a consequence of the permanence of this separation, taken together with the spouse's limited income and her need to raise two small children, the AAO finds that separation would also result in extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 adverse factors in the present case are the applicant's fraudulent entry into the United States, his residence in the United States without lawful status and his employment in the United States without authorization.

The favorable factors in the present case are the applicant's family ties to the United States, extreme hardship to his U.S. citizen wife and children if he were to be denied a waiver of inadmissibility, and the applicant's lack of a criminal record or offense.

The AAO finds that the immigration violations committed by the applicant are 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.