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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**

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FILE: [REDACTED]

Office: PORT AU PRINCE

Date: MAY 06 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge (AOIC), Port au Prince, Haiti, denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti, the spouse of a U.S. citizen and mother of two U.S. citizen children, and the beneficiary of an approved Form I-130 petition.

The AOIC found that the applicant had sought to enter the United States by fraud or by misrepresenting a material fact, and is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The director also found that the applicant had been unlawfully present in the United States for more than a year, and is therefore inadmissible pursuant section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children. The AOIC found, yet further, that the applicant had failed to establish extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal the applicant's husband submitted additional evidence. Although the applicant's husband did not appear to contest the AOIC's determination of inadmissibility, the law and evidence that led to that determination will be discussed.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

The record contains a Form I-275 Withdrawal of Application for Admission dated April 30, 1999. The officer who prepared that form stated that, upon arrival at Miami International Airport from Haiti, the applicant presented a Canadian passport issued to [REDACTED] with the applicant's photograph substituted for that of [REDACTED] and attempted to be admitted to the United States using that passport. In secondary inspection, the applicant admitted to her true identity. The record contains the photo-substituted passport.

In a Form I-867A, Record of Sworn Statement, dated April 30, 1999, the applicant admitted that she had presented the Canadian passport of [REDACTED] when attempting to enter the United States, and that it was not her passport, but that her photograph had been substituted on it. She further stated that her uncle gave her the passport sometime before he died in February 1999.

A waiver application interview report in the record, dated June 23, 2005, indicates that the applicant stated that a man offered her fraudulent documents for entry into the United States and that she paid 50,000 Haitian gourdes for those fraudulent documents. This statement appears to conflict with the applicant's previous assertion that her photo-substituted passport was a gift from her uncle.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

A Form I-275 in the record shows that the applicant was apprehended at Miami, Florida on April 30, 1999, when she presented a photo-substituted Canadian passport that represented her to be [REDACTED], a Canadian citizen. A Form I-94 shows that the applicant was released from custody on May 21, 1999 pending removal proceedings.

The record also contains a Form I-589 Application for Asylum and for Withholding of Removal that the applicant signed on October 18, 1999 and submitted in open court on October 27, 1999.

On March 7, 2000 an Immigration Judge at the Immigration Court in Miami, Florida, denied the applicant's asylum claim, and ruled that it was frivolous. Because the applicant's asylum claim was found not to be *bona fide*, the applicant's presence in the United States was unlawful beginning with her entry on April 30, 1999.

On her G-325A Biographic Information form the applicant stated that she lived at [REDACTED] in Lake Alfred, Florida from April 1999 to September 2003.

In her June 23, 2005 waiver application interview report the applicant stated that she failed to appear for a July 14, 2003 interview with USCIS because she had moved and never received correspondence pertinent to that interview. The applicant's residential history as reported on her Form G-325A does not confirm that the applicant changed residences after entering the United States but before July 14, 2003. Again, as per *Matter of Ho* this discrepancy between the applicant's

assertion and the evidence raises the issue of the veracity of all of the applicant's assertions and the credibility of all of the evidence in the record.

A Form I-205 Warrant of Removal/Deportation indicates that, on September 26, 2003, the applicant was removed from the United States. This concluded the applicant's unlawful presence that began on April 30, 1999. That unlawful presence lasted more than one year. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act.

The evidence in the record is sufficient to show that the applicant sought to procure admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Because the applicant has been found inadmissible, the balance of this decision will pertain to whether waiver of her inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(i) or section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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 record contains a letter, dated December 5, 2006, that purports to be from the applicant, although it is unsigned. In that letter, the applicant stated, “My husband is to the point of loosing [sic] his mind,” but did not otherwise address hardship that her absence from the United States has caused her husband or would cause him in the future.

The record contains a similar letter, also dated December 5, 2006. That letter purports to be from the applicant’s husband, in that it is headed with his name and address and is written from his point of view. The signature line of that letter, however, has the applicant’s name instead of her husband’s. Further the letter is unsigned.

In that letter, the applicant’s husband indicated that he is anxious and suffering insomnia because of the absence of his wife and children and their having relocated in Haiti. He stated that his children are unable to attend school because of the shooting, kidnapping, and children being mutilated in Haiti, and asked that his wife be allowed to return to the United States. He further stated, “I am to the point of loosing [sic] my mind.”

Initially, the AAO notes that the applicant’s children are not barred from returning to the United States. Neither the applicant nor her husband has addressed the possibility of the children, without their mother, joining him in the United States. Further, although the applicant and her husband claim that he has been affected mentally and emotionally by the absence of the applicant, they provided no independent evidence of the extent to which her absence has affected him.

Although the statements by the applicant and her husband are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *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)).

Further, there is no evidence in the record that failure to approve the waiver application will cause any other hardship, medical or financial, for instance, to the applicant's husband.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has a loving and devoted husband who is concerned about her absence from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(i), 8 U.S.C. § 1186(i) and under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.