

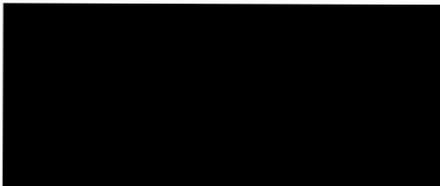
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H2



FILE: Office: NEW YORK Date: **MAY 14 2009**

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 PETITIONER:

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.

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

John E. 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 sought admission into the United States by fraud or willful misrepresentation (a fraudulent passport). The applicant is the daughter of a Lawful Permanent Resident and has applied for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated June 14, 2004.

On appeal, the applicant asserts that although the district director states that she had not submitted supporting documentation with her waiver application, she did submit affidavits from herself and her mother, and she resubmitted copies of these documents with the Notice of Appeal. In addition to evidence submitted with the waiver application, the applicant submitted a letter from her mother's physician in support of the appeal. The entire record was reviewed and considered in arriving at decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in 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. *Id.* at 566. The BIA has further stated:

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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Haiti who has resided in the United States since July 30, 1990, when she attempted to enter using a

fraudulent Haitian passport under the name [REDACTED]. The applicant's mother is a fifty-eight year-old native and citizen of Haiti and Lawful Permanent Resident. The applicant and her mother live in Brooklyn, New York.

The applicant asserts that her mother would suffer extreme hardship if the applicant is removed from the United States because she is sick and counts on the applicant for emotional and financial support. *See Affidavit of [REDACTED] dated May 7, 2004.* The applicant's mother states that her mother suffers from high blood pressure and diabetes and she relies on the applicant to care for her. *Affidavit of [REDACTED] dated May 7, 2004.* In support of these assertions, the applicant submitted a letter from her mother's physician that states that for the past two years, the applicant's mother has been "totally disabled due to severe hypertension, complications of diabetes, including diabetic nephropathy and neuropathy." *See letter from [REDACTED] dated June 22, 2004.* The letter from [REDACTED] does not provide any more detail about her condition, any treatment being received, or the prognosis for recovery. The AAO takes note, however, of a definition and description of the condition of diabetic nephropathy from the website of the National Institutes of Health:

Nephropathy is a major cause of sickness and death in persons with diabetes. It is the leading cause of long-term kidney failure and end-stage kidney disease in the United States, and often leads to the need for dialysis or kidney transplantation Complications due to chronic kidney failure are more likely to occur earlier, and get worse more rapidly, when it is caused by diabetes than other causes. Even after dialysis or transplantation, persons with diabetes tend to do worse than those without diabetes. *MedlinePlus (National Library of Medicine and National Institutes of Health), Medical Encyclopedia – "Diabetic nephropathy."*

The same medical encyclopedia defines diabetic neuropathy as "a common complication of diabetes, in which nerves are damaged as a result of high blood sugar levels (hyperglycemia)," and states that that although treatment relieves pain and can control some symptoms, the disease generally continues to get worse. *MedlinePlus, Medical Encyclopedia – "Diabetic neuropathy."*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letter from the physician treating the applicant's mother provides little detail about her condition, but states that she is totally disabled and suffering from conditions that are described as serious and unlikely to improve significantly even with treatment. The evidence on the record establishes that the applicant's mother's medical condition is serious and that the applicant, who resides with her, provides her assistance and emotional support, as well as financial support that would be necessary due to her level of disability. In light of her medical condition and the emotional hardship that would result from being separated from the applicant and her two grandchildren, it appears that the applicant's mother would suffer emotional, physical, and financial hardship that, when considered in the aggregate, would rise to the level of extreme hardship if the applicant were removed from the United States.

The applicant did not submit evidenced or make any assertions concerning hardship her mother would experience if she were to relocate to Haiti with the applicant. Nevertheless, the AAO takes notice of a recent Travel Warning issues by the Bureau of Consular Affairs of the U.S. Department of State. The warning states,

The State Department warns U.S. citizens of the risks of travel to Haiti and recommends deferring non-essential travel until further notice. . . . 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.

. . . .

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. . . .

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. . . . 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. . . . The Embassy restricts travel by its staff to some areas outside of Port-au-Prince because of the prevailing road and security conditions. *U.S. Department of States, Travel Warning – Haiti, January 28, 2009.*

The AAO finds that the applicant's mother, who has been a Lawful Permanent Resident since 1994 and is disabled from a serious medical condition, would suffer extreme hardship if she relocated to Haiti in light of the destruction caused by hurricanes in 2008, poor economic conditions, and the high level of violent crime.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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(i) 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 factor in the present case is the applicant's immigration violation, attempting to enter the United States with a fraudulent passport. The AAO notes that the applicant was only sixteen years old at the time this occurred.

The favorable factors in the present case are the hardship to the applicant's mother; the applicant's lack of a criminal record or additional immigration violations; her family ties in the United States, including her mother, brother, and two U.S. citizen children; and her over eighteen years of residence and stable employment history in the United States, as evidenced by income tax returns and employer letters submitted with her application for adjustment of status.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained. The district director shall reopen the denial of the Application for Adjustment of Status (Form I-485) and continue processing the application.

ORDER: The appeal is sustained.