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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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[REDACTED]

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FILE:

[REDACTED]

Office: PORTLAND, ME

Date: **NOV 02 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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Maine. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation.¹ The applicant's mother is a U.S. citizen, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director determined that the applicant had not established extreme hardship to his mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, dated November 20, 2008.

On appeal, counsel asserts that the decision was against the weight of the evidence, arbitrary and capricious, erroneous in fact and law, a gross abuse of discretion and a deprivation of due process rights. *Brief in Support of Appeal*, at 1, undated.

The record includes, but is not limited to, counsel's brief and previously submitted documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented a passport that belonged to his cousin when he entered the United States on April 17, 1995. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for his misrepresentation.

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

¹ The AAO will not make a determination as to whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act based on his conviction of offering to file a false instrument or whether the petty offense exception is applicable to this conviction. The AAO notes that the waiver requirements of section 212(i) of the Act are more restrictive than those of section 212(h) and that the applicant must, therefore, establish his eligibility for a waiver under section 212(i). Even if the applicant is inadmissible for his conviction and the petty theft exception does not apply, eligibility for a waiver under the requirements of section 212(i) of the Act also satisfies the requirements of section 212(h).

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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's mother. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Haiti or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Haiti. Counsel states that the applicant's mother suffers from numerous medical conditions, she has been placed on social security disability benefits by the U.S. government and treatment for her medical conditions is unavailable in Haiti. *Brief in Support of Appeal*, at 1. Counsel states that U.S. State Department reports and other authoritative sources document the lack of medical care and employment opportunities in Haiti and the horrific political, social, and economic conditions that are chronically prevalent there, and that conditions are so poor in Haiti that the U.S. government is not returning deportees. *Id.* at 2. The record includes documents reflecting the difficult country conditions in Haiti, including the devastation of its healthcare system by hurricanes in 2008. Counsel further states that the field office director paid no heed to the applicant's mother's long-term total disability and that country conditions are specifically a factor to be considered. *Id.* at 3.

The record reflects that the applicant's mother is a patient at the Mattapan Community Health Center; she is unable to work; and she has hypertension, hypercholesterolemia, knee pain, chronic pain, shoulder pain, chronic lower back pain, left cervical radiculopathy, bilateral carpal tunnel syndrome, bilateral ulnar neuropathy, microscopic hematuria, and a left knee Baker's cyst. *Letter from Applicant's Mother's Physician*, dated July 14, 2008. Her physician states that many of these conditions cannot be adequately treated in Haiti. *Second Letter from Applicant's Mother's Physician*, dated November 3, 2008. The record reflects that the applicant's mother is also under a chiropractor's care for rehabilitation in relation to an ongoing spinal condition, she is totally disabled with significant disability to her cervical and lumbar spinal structures, she requires more medical treatment and therapy, and she will likely be unable to find adequate care in Haiti as she is on disability and due to the current state of Haiti's government and social situation. *Letter from Applicant's Mother's Chiropractor*, dated October 31, 2008. The applicant's mother states that she could not move to Haiti under any circumstances as her health issues would not allow it and the Haitian political situation is extremely unstable. *Applicant's Mother's Statement*, at 1-2, dated July 14, 2008. The AAO finds that the record establishes that the applicant's mother would experience extreme hardship upon relocating to Haiti.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that objective evidence of the applicant's business ties, the financial and psychological impact on his mother and other humanitarian issues, i.e., his U.S. citizen children, were ignored by the field office director. *Brief in Support of Appeal*, at 2. Counsel states that the field office director misread the social worker's letter that discussed the extreme hardship that the applicant's mother would experience emotionally, and that the applicant provides his mother with financial support, as well as tremendous and irreplaceable emotional support. *Id.* at 3.

The applicant's mother states that she was involved in an accident in 2002 that left her totally disabled, she receives social security disability income that leaves her with meager funds to live on, the applicant financially supports her in every way necessary to survive, he deposits funds in her bank account each month, and he has been employed by the same company for over ten years and this reflects his firm commitment to support her and his children. *Applicant's Mother's Statement*, at 1. The record reflects that the applicant's mother received \$2,856 in social security benefits in 2007. *Applicant's 2007 Form SSA-1099-SM*. The record also reflects that the applicant has been working as a manager with the same garage management company since April 15, 1997. *Applicant's Employer Letter*, dated June 23, 2008. The record includes bank account information which indicates that the applicant is providing some financial support for his mother. *Bank Statements*, various dates.

The applicant's mother states that she has a very close relationship with her son, he provides her with emotional support, he has allowed her to continue to live a fruitful and happy life in the United States, separation would be a major detriment to her physical and emotional health, it is not realistic

to expect that he would be able to work and financially support her and his two children from Haiti, his U.S. citizen children would be left fatherless, and she would worry about the applicant's safety. *Applicant's Mother's Statement*, at 1-2. The applicant's mother's niece, who indicates she is a social worker for the Commonwealth of Massachusetts, states that she has seen how her aunt's myriad medical conditions have restrained her; her aunt was an active, self-sufficient and independent individual; her aunt is extremely dependent on the applicant for moral, financial and physical support; the applicant's repatriation will have a serious impact on his mother's ability to care for and financially sustain herself; and that, in her professional capacity, she believes that the absence of the applicant's support and his separation from his mother will have a serious adverse affect on her well-being and his ability to care appropriately for her needs. *Applicant's Mother's Niece's Statement*, dated November 4, 2008. Although the record contains country conditions materials, none establish that the applicant would not be able to find employment in Haiti. Further, the record indicates that the applicant has two U.S. citizen sisters who reside in Florida, and an uncle and aunt who live at the same address as his mother. *Form I-601; Form I-864, Affidavit of Support*. There is no evidence in the record that establishes that these family members are unable or unwilling to financially assist the applicant's mother in his absence or that they are incapable of offering her the moral and physical support she currently receives from the applicant. The record also fails to offer sufficient evidence of the emotional hardship that the applicant's mother states she would experience in his absence. The AAO notes that there is no documentary evidence, e.g., a psychological evaluation by a licensed mental health professional, that demonstrates the emotional impact of the applicant's removal on his mother. The brief statement provided by the applicant's mother's niece is insufficient proof of extreme emotional hardship. As such, the record does not include sufficient evidence of emotional, financial, medical or any other hardships that, in the aggregate, establish that the applicant's mother would experience extreme hardship upon remaining in the United States without the applicant.

U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS*, *supra*, held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the

Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.