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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**

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: CHICAGO, ILLINOIS

Date: JAN 04 2011

[consolidated therein]

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.

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Jamaica 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 entering the United States by presenting a Jamaican passport in someone else's name. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his United States citizen spouse and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 21, 2007.

On appeal, the applicant, through counsel, asserts that the Field Office Director's decision "is erroneous, fails to conform to legal precedent and fails to properly weight [sic] the evidence supplied." *Form I-290B*, filed July 19, 2007. Counsel further claims that the applicant "demonstrated extreme hardship to his U.S. citizen wife." *Id.*

The record includes, but is not limited to, counsel's appeal brief; letters from the applicant, his wife, his stepson, and friends and acquaintances; a psychological evaluation on the applicant's wife; mortgage documents; bank statements; and country reports on Jamaica. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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 AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) 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 citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on January 22, 2000, the applicant entered the United States by presenting a Jamaican passport in someone else's name. On May 5, 2004, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On November 16, 2004, the applicant's Form I-130 was approved. On March 30, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 30, 2005, the applicant's Form I-485 was denied. On October 17, 2005, the applicant filed another Form I-485 and a Form I-601. On June 21, 2007, the Field Office Director denied the applicant's Form I-485 and Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative.

The AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's naturalized United States citizen spouse. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

Counsel states the applicant's wife "will endure severe emotional trauma if she and [the applicant] were separated." *Appeal Brief*, page 3, filed July 19, 2007. In an undated letter, the applicant states "[n]ot been [sic] here to support [his] family would put tremendous strain on [his] wife." In an evaluation dated October 20, 2006, [REDACTED] states "a forced separation between [the applicant] and his family would be emotionally devastating to his wife...and their three children, all of whom are dependent on him, emotionally, financially, and developmentally." In an undated letter, the applicant's stepson, [REDACTED] states his family needs the applicant in their lives. [REDACTED] states the applicant's stepson "has no contact with his biological father and [the applicant] is raising him as his own." The applicant's wife states "[her] son is at the age where he needs a good male figure in his life and [the applicant] has been there to help him go through some of the difficult time in his young life." The applicant states he has seen his stepson grow "from detentions in school to been [sic] on the honor roll." [REDACTED] states the applicant's children are "extremely attached to [the applicant]."

Counsel states "[r]emoval from the United States would be especially harsh on [the applicant] because he has a significant medical issue that requires attention." *Appeal Brief, supra* at 10. In an undated letter [REDACTED] states he is treating the applicant for "severe gait abnormalities secondary to previous amputation of his left foot." [REDACTED] states the applicant "will require foot surgery" and he does not "believe [the applicant] will receive adequate care if he is unable to remain in this country." The AAO notes that there was no documentation submitted establishing that the applicant could not receive treatment for his medical condition in Jamaica or that he has to remain in the United States to receive medical treatment. Additionally, the AAO notes that even though the applicant may not receive the same medical treatment in Jamaica as he would in the United States, hardship the alien himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding.

Counsel states the applicant and his wife "are the co-owners of a restaurant...and have invested significant capital into the business.... In addition to the approximately \$30,000 of capital invested in the restaurant, [the applicant and his wife] are bound by a lease on the restaurant space." *Appeal Brief, supra* at 5. Counsel states the applicant "runs the restaurant, working fifteen hour days six days a week while [the applicant's wife] works another job full time." *Id.* The AAO notes that the applicant's wife's full-time job as a Commercial Loan Portfolio Analyst with GE Corporate Financial Services provides the applicant's family with health insurance and additional income. [REDACTED] states the applicant's "family draws its primary income from the restaurant." Counsel states if the applicant was removed from the United States, his wife "would be forced to run the business on her own while abandoning her employment with benefits or would have to sell the fledgling business." *Appeal Brief, supra* at 5. Counsel states "[b]oth jobs are necessary to keep the family financially stable, and to provide health insurance benefits." *Id.* at 6. Additionally, counsel states the applicant and his wife "currently hold mortgages on two different homes because their home in Broadview, Illinois failed to sell after several months on the market." *Id.* at 5. Counsel further states the applicant and his wife "have enormous financial responsibilities that [the applicant's wife] cannot handle on her own." *Id.* at 7.

Counsel states the applicant's wife's "entire extended family resides in the United States, and she is extremely close to her father with whom she immigrated to the United States when she was a teenager."

*Id.* at 3. Counsel further states the applicant's wife "will face extreme financial peril as a result of [the applicant's] departure from the United States, as well as separation from all of her remaining family members if she relocates to Jamaica." *Id.* at 10.

The AAO notes that the applicant's family is financially dependent on the income generated by the restaurant co-owned by the applicant and his wife. Therefore, the AAO finds that if the applicant were removed from the United States, his wife and children would suffer extreme hardship staying in the United States without their husband/father, who manages the business that provides the majority of the household income, or joining their husband/father in Jamaica, where he does not have employment and the applicant's wife has no family ties. The applicant's wife and children are incapable of maintaining their wellbeing in the absence of the applicant. Additionally, all of the applicant's wife's family resides in the United States.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(i) of the Act, in that the applicant's spouse will suffer extreme emotional and financial hardship as a result of her separation from the applicant. Combined with the increased financial and familial burdens that the applicant's spouse will face if the applicant departs the United States, the cumulative hardship in this case is beyond that which is normally experienced in cases of removal. Accordingly, the AAO finds that the applicant has established that his United States citizen wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

The favorable factors presented by the applicant are the extreme hardship to his United States citizen wife and children, who depend on him for emotional and financial support; the applicant's work history in the United States; letters of recommendations; no criminal record apart from his immigration violation; and no other grounds of inadmissibility.

The unfavorable factors include the applicant's entry into the United States by misrepresentation, and periods of unauthorized presence and employment.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The application is approved.