

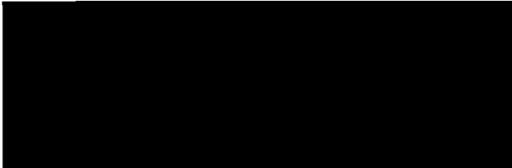
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



175

FILE:



Office: MIAMI (TAMPA), FLORIDA

Date:

FEB 12 2010

IN RE:



APPLICATION:

Application for Waiver of Ground of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a 29-year-old 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a citizen of the United States, and she seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Director*, dated Feb. 11, 2009. On appeal, the applicant contends through counsel that the director failed to evaluate all of the information related to the extreme hardship analysis. *See Form I-290B, Notice of Appeal*, filed Mar. 16, 2009.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they married in Florida on June 14, 2003; birth certificates for the couple's two children; a hardship statement from the applicant's husband; an affidavit from the applicant; financial and tax documents; insurance records; family photographs; information on country conditions in Haiti; and a letter from the applicant's previous attorney. The entire record was reviewed and considered in rendering this decision on appeal.

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

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 chapter is inadmissible.

The record indicates that the applicant made an application for entry into the United States by presenting an altered Haitian passport of another individual on May 3, 1996. *See Form I-122*, dated May 3, 1996. The applicant was paroled into the United States pending an exclusion proceeding. *See Form I-94, Arrival-Departure Record*, dated May 3, 1996. After placement in removal proceedings, *see Notice to Appear*, dated July 13, 2004, the immigration judge terminated the proceedings to allow the applicant to apply for adjustment of status, *see Order of the Immigration Judge*, dated Jan. 26, 2007. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on her behalf, which U.S. Citizenship and Immigration Services (USCIS) approved on July 15, 2008. *See Form I-130, Petition for Alien Relative*, filed Oct. 7, 2004. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on October 3, 2007, which USCIS denied on February 11, 2009. *See Decision on Application for Status as Permanent Resident*. The applicant's use of the passport of another person in an attempt to gain admission into the United States renders her inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S-and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

In order to obtain a hardship waiver under section 212(i) of the Act, an applicant must show that the bar imposes extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation). Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *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 mere economic detriment and emotional hardship

caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that the applicant has established that the denial of a waiver would impose extreme hardship on her spouse if he remains in the United States without his wife, or if he relocates to Haiti to be with his family.

The record reflects that the applicant's spouse, [REDACTED], is a 32-year-old native of Haiti and citizen of the United States. See *Certificate of Naturalization for [REDACTED]*. The applicant and her husband have been married for over six years. See *Marriage Certificate*. The couple has two U.S. citizen children, who are now 5 and 3 years old. See *Birth Certificates for [REDACTED] and [REDACTED]*.

The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. As a result, Haitians in the United States are unable to return safely to their country. Even prior to the current catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a travel warning issued on January 28, 2009, the U.S. Department of State noted the extensive damage to the country after four hurricanes struck in August and September 2008, and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State, Travel Warning – Haiti, January 28, 2009*. Based on the designation of TPS for Haiti and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that requiring [REDACTED] to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that [REDACTED] also would experience extreme hardship were he to remain in the United States without the applicant. This finding is based on the extreme emotional harm [REDACTED] will experience due to concern about the applicant's well-being and safety in Haiti, a concern that is beyond the common results of removal or inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). The adverse factor in this case is the misrepresentation for which the applicant seeks a waiver. The favorable and mitigating factors in this case include: the applicant's ties to her U.S. citizen spouse and children in the United States; her long residence and work history in the United States; the applicant's lack of a criminal record; and the hardship to the applicant, her spouse, and her children, caused by the denial of the waiver. See *Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that the favorable factors in this case outweigh the adverse factors, and that a grant of relief in the exercise of discretion is warranted. Accordingly, the appeal will be sustained.

The director denied the applicant's Form I-485, Application to Adjust Status, solely on the basis of the denial of the applicant's Form I-601. Because the appeal of the waiver application will be sustained, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i), and issue a new decision.

ORDER: The appeal is sustained. The case is returned to the director for further action on the applicant's adjustment application in accordance with the foregoing decision.