

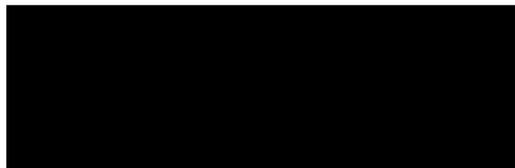
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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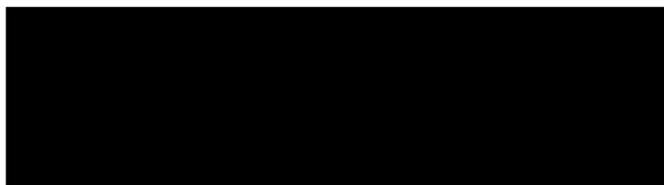
Date:

MAR 31 2010

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Jamaica, was found 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 attempted to procure entry to the United States by fraud and/or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to be able to reside in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 20, 2007.

In support of the appeal, counsel for the applicant submits the following, *inter alia*: the Form I-290B, Notice of Appeal (Form I-290B), dated September 17, 2007; an affidavit from the applicant's step-daughter, dated September 18, 2007; an affidavit from the applicant's U.S. citizen spouse, dated September 18, 2007; copies of the applicant's step-grandchildren's U.S. birth certificates; and medical documentation pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 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.

Regarding the district director's finding that the applicant was inadmissible under Section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, the record establishes that the applicant attempted to procure entry to the United States in February 1970 by falsely claiming to be a U.S. citizen.¹ The district director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation.²

Section 212(a)(6)(C)(i) 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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative for purposes of a 212(i) waiver, and hardship to the applicant, his step-child and/or his step-grandchildren cannot be considered, except as it may affect the applicant's spouse.

¹ On appeal, counsel notes that "USCIS alleged that [redacted] [the applicant] claimed that he was a U.S. Citizen in the 1970s; yet, DHS provided no proof regarding this allegation. Thus, [redacted] did not have any opportunity to rebut the document, if any, on which DHS based its denial..." *Form I-290B*, dated September 17, 2007. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

Pursuant to Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division records, derived from fingerprints, the applicant made a false claim to U.S. citizenship when attempting to procure entry to the United States on February 7, 1970. It has thus not been established, by a preponderance of the evidence, that the applicant is not inadmissible under section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation.

² The AAO notes that the applicant, at his I-485, Adjustment of Status, interview, was asked whether he had ever claimed to be a United States citizen and whether he had ever attempted to enter the United States by falsely claiming to be a United States citizen. The applicant responded "No" to both questions. *Record of Sworn Statement*, dated January 18, 2007. These responses contradict the record, which, as noted above, reflects that the applicant attempted to procure entry to the United States in February 1970 by falsely claiming to be a U.S. citizen. Nevertheless, as the AAO has already determined that the applicant is inadmissible under section 212(a)(6)(C) of the Act, based on his attempted entry in February 1970 by falsely claiming to be a U.S. citizen, it is not necessary to determine whether the applicant's responses at his I-485 interview, asserting that he had never claimed to be a U.S. citizen and/or attempted to enter the United States by falsely claiming U.S. citizenship, also constitute fraud and/or willful misrepresentation under section 212(a)(6)(C) of the Act.

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 list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant’s U.S. citizen spouse asserts that she will suffer emotional and physical hardship were she to reside in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration she states that she would suffer emotional hardship as they are both over fifty-five years old and need each other at this stage in their lives. She further notes that her spouse plays an integral role in her daughter’s children’s care, as her daughter works and the children’s fathers do not care for them in any way, and his physical absence would cause her hardship as he would no longer be there to assist with the children’s care. Finally, the applicant’s spouse notes that she will suffer physical hardship were the applicant to reside abroad, as she has been diagnosed with high blood pressure, diabetes and hypertension, is often in and out of hospitals and takes many medications; she contends that she needs her spouse by her side to help care for her. *Affidavit of* [REDACTED] dated September 18, 2007.

In support, medical records and a letter from the applicant’s spouse’s treating physician, [REDACTED], have been provided. [REDACTED] confirms that the applicant’s spouse suffers from diabetes mellitus, complicated by diabetic retinopathy and impaired vision, hypertension and GERD and notes that she depends physically on her spouse because of her medical illnesses and needs his continued presence for help with the activities of daily living and for physical and emotional support. *Letter from* [REDACTED] dated July 11, 2007.

To begin, it has not been established that the applicant’s U.S. citizen spouse would suffer extreme emotional hardship were the applicant to relocate abroad due to his inadmissibility. The record establishes that the applicant’s spouse has a support network of children and grandchildren; it has not been established that they would be unable to provide the emotional, and physical if needed,

support she may need due to her spouse's physical absence. Nor has been established that the applicant's step-child's or step-grandchildren's hardships due to his physical absence will cause extreme hardship to the applicant's spouse, the only qualifying relative in this case.

In addition, the AAO notes that the letter provided from the applicant's spouse's treating physician confirms that the applicant's spouse suffers from numerous medical conditions, but makes no reference to the severity of the situation, the short and long-term treatment plan, and what hardships she will face if the applicant specifically is not physically present in the United States. Moreover, although the applicant's spouse contends that she will not be able to travel back and forth to Jamaica, her native country, to visit her spouse, no documentation has been provided to support said assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). Finally, the applicant's spouse's claims to physical hardship are diminished by the fact that she has been able to maintain long-term, full-time employment as a Housekeeper. *Letter from* [REDACTED] [REDACTED] dated May 9, 2007 and *Form G-325A, Biographic Information*, dated May 8, 2006.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). 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. While the AAO recognizes that the applicant's spouse may need to make alternate arrangements with respect to her own care due to the applicant's inadmissibility, it has not been established that such arrangements would cause her extreme hardship. As such, the record fails to establish that the applicant's spouse's continued care and survival directly correlate to the applicant's physical presence in the United

Extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts that she needs to see her doctor at the very least monthly, but this would be impossible in Jamaica, where she does not believe that she would have the same medical following that she has in the United States. *Supra* at 1. She further notes that she is a U.S. citizen and America is her home, with her children; she asserts that she cannot go and live in Jamaica. *Affidavit of* [REDACTED] [REDACTED] dated July 12, 2007.

Counsel has not established that the applicant's spouse would experience extreme emotional hardship were she to relocate to Jamaica, her native country, to reside with the applicant due to his inadmissibility. Nor has it been established that her children/grandchildren would be unable to travel to Jamaica to visit or alternatively, that the applicant's spouse would be unable to travel to the United State to visit her family. Moreover, no documentation has been provided by counsel to establish that the applicant's spouse would suffer physical hardship due to the quality of medical care in Jamaica. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate to Jamaica, her home country, to reside with the applicant due to his inadmissibility.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.