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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

H6

FILE:



Office: MEXICO CITY, MEXICO  
(PORT-AU-PRINCE, HAITI)

Date: APR 13 2010

IN RE: Applicant:



APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The Acting District Director shall reopen the applicant's Form I-212 for action consistent with this decision.

The record reflects that 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 entering the United States by presenting a photo-substituted Canadian passport; and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States and 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), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to in order to reside in the United States with his wife.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 9, 2008.

On appeal, the applicant's wife states that she loves the applicant and she needs him in the United States with her because she cannot move to Haiti. *Form I-290B*, filed July 5, 2008.

The record includes, but is not limited to, statements from the applicant's wife and stepson, a mortgage document, and the applicant's marriage certificate. 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...

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
  - ....
  - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
  - ....
- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that on January 22, 2000, the applicant attempted to enter the United States by presenting a photo-substituted Canadian passport. On August 23, 2000, the applicant filed an application for Asylum (Form I-589). On July 3, 2001, the applicant married [REDACTED] a lawful permanent resident of the United States, in Florida. On September 17, 2002, an immigration judge denied the applicant's Form I-589. On October 16, 2002, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (BIA). On November 4, 2002, the applicant's wife filed a Form I-130 on behalf of the applicant. On March 11, 2004, the BIA dismissed the applicant's appeal. On May 2, 2005, the applicant was removed from the United States. On August 18, 2005, the applicant's Form I-130 was approved. On January 11, 2008, the applicant filed a Form I-601 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On June 6, 2008, the Acting District Director denied the applicant's Form I-212. On June 9, 2008, the Acting District Director denied the applicant's Form I-601, finding the applicant had accrued more than a year of unlawful presence, had entered the United States by fraud or willfully misrepresenting a material fact, and had failed to demonstrate extreme hardship to his lawful permanent resident spouse.

In that the applicant entered the United States with a photo-substituted passport, the AAO finds that he willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

Additionally, the applicant accrued unlawful presence from March 12, 2004, the day after the BIA dismissed his appeal, until he was removed on May 2, 2005. The applicant is seeking admission into the United States within ten years of his May 2, 2005 removal from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

The applicant is seeking section 212(i) and section 212(a)(9)(B)(v) waivers of the bars to admission resulting from violations of sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Waivers under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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 sections 212(i) and 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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).

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 *Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 has also held:

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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In a statement dated December 20, 2007, the applicant’s wife states it has been “hard for [her] to pay [their] bills since [the applicant] has been gone.” She claims she has been late on her bills and she cannot do it on her own. The AAO notes that the record contains a November 16, 2007 mortgage statement which establishes that the applicant’s wife is late on her mortgage bill. The applicant’s wife states she has two grown children, but they can only help her a little bit. In a letter dated January 15, 2008, the applicant’s wife’s son states that he has been financially supporting his mother since the applicant was removed from the United States. The applicant’s wife states that when the applicant was in the United States, they both paid the bills, and now she has to send him money in Haiti. She also states that she greatly misses the applicant.

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 Haitians and the disastrous conditions that 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 the applicant’s wife to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant’s wife would also experience extreme hardship were she to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant’s wife 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. Accordingly, the AAO finds that the applicant has established that his lawful permanent resident wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

The favorable factors presented by the applicant are his United States citizen wife, the extreme hardship to his wife as a result of his inadmissibility, and the absence of a criminal record apart from his immigration violation.

The unfavorable factors include the applicant's attempt to enter 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.

In that the applicant's appeal has been sustained, the Acting District Director shall reopen the applicant's Form I-212 for action consistent with this decision.

**ORDER:** The appeal is sustained. The Acting Field Office Director shall reopen the applicant's Form I-212 for action consistent with this decision.