

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H6

FILE:



Office: NEWARK, NEW JERSEY

Date: MAR 11 2010

IN RE:

Applicant:



APPLICATION:

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:



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 that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED], 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director, dated September 10, 2007.* The applicant submitted a timely appeal.

On appeal, counsel asserts that the psychological evaluation of the applicant's spouse, [REDACTED] reflects that he was diagnosed with adjustment disorder with mixed anxiety and depressed mood as a result of his fear that his wife will have to return to Haiti. Counsel submits documentation to demonstrate social, economic, and health conditions in Haiti. Counsel contends that the director failed to properly interpret the submitted evidence or to apply relevant case law. According to counsel, if the applicant's family moved to Haiti they would live in poverty and would not be able to afford healthcare, schooling, or the basic necessities of life. Counsel maintains that [REDACTED] works long hours and would not be able to take care of his daughter. Counsel avers that the applicant merits a discretionary waiver.

The AAO will first address the finding of inadmissibility. 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.

The record conveys that on December 27, 2000, the applicant sought to gain admission into the United States by presenting a photoswitched Canadian passport bearing the name [REDACTED] at the Miami International Airport. At secondary inspection the applicant admitted to her true name and date of birth, that her brother had obtained the passport from a friend, and that she did not pay for the passport. She is therefore inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of her true identity and her eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen husband. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The evidence in the record includes: an affidavit by [REDACTED] the psychological evaluation by [REDACTED] the letter by the physician of the applicant's daughter stating that she has a hearing loss that interferes with her learning in school, results of a hearing examination, a certificate of occupancy, a deed, a title, and a document showing core health indicators for Haiti and the United States for 2006 by the World Health Organization. The record also contains information from the publications Central Intelligence Agency, *The World Factbook 2006*. Washington, DC: Central Intelligence Agency, 2006; information about Haiti by the U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2005: Haiti* (March 8, 2006); and the U.N. International Children's Fund, *The State of the World's Children*

2005, *The Childhood Under Threat* (December 2004). In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Haiti. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 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] would also 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 factors presented do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The unfavorable factor in this matter is the applicant's misrepresentation and any unauthorized employment. The favorable factor in this matter is the extreme hardship to the applicant's spouse. The AAO also notes that the applicant does not appear to have a criminal record. The AAO finds that the hardship imposed on the applicant's spouse as a result of her inadmissibility outweighs the unfavorable factor in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

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