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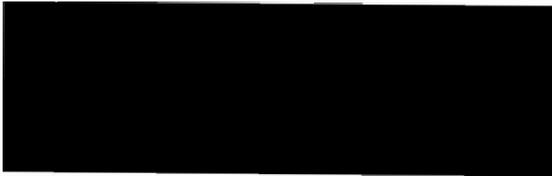
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CLEVELAND, OH

Date: MAR 24 2008

IN RE:



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:



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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 procuring admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen. 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.

The district director concluded 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 11, 2006.

On appeal, counsel asserts that the district director mischaracterized and misunderstood the diagnosis of the applicant's spouse's depression, misrepresented the financial hardship that the applicant's spouse would face, and disregarded the applicant's son's sickle-cell anemia. *Form I-290B*, received January 8, 2007.

The record includes, but is not limited to, counsel's brief and Form I-601 cover letter, the applicant's spouse's statement, a psychological evaluation of the applicant's spouse, a letter from the applicant's spouse's counselor, photographs of the applicant's family, medical records for the applicant's son, information on Ohio counseling law, information on depression and country conditions information on Jamaica. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided fraudulent documents to obtain admission to the United States on October 8, 1997. As a result of his prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

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.

Section 212(i) of the Act provides 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

¹ Counsel claims that the district director erred in not acknowledging that the applicant is admissible under section 245(i) of the Act. *Brief in Support of Appeal*, at 1, dated February 2, 2007. The AAO notes that an application for adjustment of status under section 245(i) of the Act does not exempt the applicant from establishing that he is not inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Jamaica or in the event that she remains in the United States, as there is no requirement that she reside outside of the United States based on the denial of the applicant's waiver request. The AAO also notes that hardship to the applicant's child will be considered to the extent that such hardship may affect the applicant's spouse.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Jamaica. Counsel states that there is no way that the applicant's spouse, who is enrolled in nursing school, would be able to recoup the financial costs of relocating to Jamaica. *Form I-601 Cover Letter*, at 5, undated. Counsel states that the applicant's spouse would be forced to quit her job, forfeit the investment in her nursing degree and jeopardize her employment and financial security for the future. *Id.* at 8. Counsel states that the applicant's spouse would have to sell her assets, quite possibly at a huge loss. *Id.* at 9. The record does not include substantiating evidence that the applicant's spouse would face a huge loss in selling her assets and that she would experience uncommon financial hardship in Jamaica.

Counsel states that the applicant's spouse and child would not be accepted in Jamaican society. *Form I-601 Cover Letter*, at 6. The AAO notes that the applicant's spouse is originally from Jamaica and is, therefore, familiar with the language and culture. Counsel states that there are growing incidents of violence and discrimination against women in Jamaica. *Id.* at 10. The record includes substantiating evidence of this claim.

Counsel states that moving to the warmer climate of Jamaica would have severe and possibly fatal consequences for the applicant's son, who has sickle cell anemia. *Id.* The record includes medical records for the applicant's son which reflect that he has sickle cell anemia. Counsel asserts that the leading cause of death in Jamaica is chronic noncommunicable disease, sickle cell anemia is a chronic noncommunicable disease, the National Institute of Health states that patients with sickle cell anemia need continuous treatment,

comprehensive emergency services are located only in Kingston and Montego Bay, prescription drugs are limited in outlying parishes and the applicant's son's deteriorating health would affect the applicant's spouse's emotional and financial state. *Brief in Support of Appeal*, at 5. The record reflects that medical care is more limited than in the United States, and doctors and hospitals often require cash payment prior to providing services. *Department of State Consular Information Sheet for Jamaica*, at 3, dated December 20, 2006.

The applicant's spouse was evaluated by a licensed professional clinical counselor, who states that the applicant's spouse has complained of poor sleep, random crying, irritability, panic attacks and a sense of helplessness. *Evaluation of the Applicant's Spouse*, at 1, dated July 13, 2006. The counselor also diagnosed her with major depressive disorder. *Id.* at 4-5. The record establishes that licensed professional clinical counselors in Ohio are allowed to diagnose and treat mental and emotional disorders. *Ohio Counselor, Social Worker & Marriage and Family Therapist Board Laws & Rules as of November 4, 2006*, at 7. Accordingly, clinical counselor [REDACTED] is qualified to read the results of the Becks Depression Inventory he administered to the spouse, which establishes her as being severely to extremely depressed. *Evaluation of the Applicant's Spouse*, at 3. He states that, in part, the spouse's depression is based on her continuing concern about her son's health and that if she relocates to Jamaica, she believes that she and the applicant won't have any support there from her few remaining family members or the applicant's and that the chances of her son getting adequate health care are small. *Evaluation of the Applicant's Spouse*, at 4-5. His finding that the spouse's depression is, in part, the result of her son's health problems is supported by the letter written by LPCC [REDACTED]. *Letter from [REDACTED], LPCC*, dated June 9, 2006.

Based primarily on the emotional hardship that the applicant's depressed spouse would experience as it relates to dealing with her son's sickle cell anemia in Jamaica, the AAO finds that extreme hardship has been established in the event that the applicant's spouse relocates to Jamaica

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse details the assistance provided by the applicant in taking care of their child and in providing for her financially, and she details the difficulties that her family encountered in their single-parent household. *Applicant's Spouse's Statement*, at 1-2, undated. Counsel states that forced separation will cause severe emotional and psychological stress to the applicant's spouse and child as they are extremely close to the applicant. *Form I-601 Cover Letter*, at 4-5. Counsel states that the applicant and his spouse have been married since 2001, they have a six-year old child, the applicant is the backbone of the family, the applicant's spouse and child receive medical insurance through the applicant's employer and the applicant's spouse does not have medical insurance which is necessary to finance her son's on-going treatment for sickle-cell anemia. *Id.* at 5-6.

Counsel states that the withdrawal of the applicant's income would be devastating as the applicant and his spouse barely keep ahead of their financial responsibilities despite their combined income. *Id.* at 8. The record includes a copy of a shut off notice from the applicant's spouse's power company and an outstanding balance of over \$4000. *Dominion Power Bills*, dated January 3 and May 1, 2006. The record includes a delinquent water bill. *Division of Water Bill*, dated May 5, 2006. The applicant's spouse has a student loan balance of over \$6800. *Letter from Great Lakes Educational Loan Services, Inc.*, dated February 14, 2006. Counsel states that the applicant's spouse would lose almost half of the family income which is used to

support herself and her son, including rent, utilities, food and medical expenses. *Brief in Support of Appeal*, at 3.

Counsel states that the applicant's spouse nursing program is full-time during the school year and she would be unable to work, watch her son and attend school at the same time. *Form I-601 Cover Letter*, at 8. Counsel states that there is an increased prevalence of violent crime, drug use, and academic failure of attempting to raise an African-American child in a single parent household, and these factors would negatively impact the applicant's spouse. *Id.* at 9.

As mentioned previously, the applicant's spouse was evaluated by a licensed professional clinical counselor, who states that the applicant's spouse has complained of poor sleep, random crying, irritability, panic attacks and a sense of helplessness. *Evaluation of the Applicant's Spouse*, at 1. The counselor also diagnosed her with major depressive disorder and states that her symptoms will worsen if the applicant is removed. *Id.* at 4-5. The district director disputed the capacity of the licensed professional clinical counselor to make said diagnosis and noted that no evidence of further counseling was submitted. *Decision of the District Director*, at 1-2. However, the record reflects that at the time of the evaluation, the applicant's spouse had begun seeing a second licensed professional clinical counselor due to stress related to the demands of nursing school, the applicant's possible removal and the needs of her son with sickle cell anemia and was scheduled for a second appointment with this individual on June 23, 2006. *Letter from [REDACTED] LPCC*. The record includes documentation reflecting that the applicant's son has numerous physicians' appointments.

Based on the totality of the aforementioned factors, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane

considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors include the applicant's misrepresentation and his period of unauthorized stay.

The favorable factors include the applicant's U.S. citizen spouse and child, extreme hardship to his spouse, an approved I-130 petition, stable employment, payment of taxes and lack of a criminal record.

The AAO finds that the misrepresentation of the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO concludes that, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.