U.S. Department of Homeland Security
20 Massachusetts Avenue N.W. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Baltimore, Maryland Date: OCT 1 2 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be 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). The applicant married a United States citizen, on March 17, 1995 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The District Director concluded that the applicant knowingly and willfully misrepresented herself to immigration officials in order to enter the United States. Additionally, the District Director concluded that the applicant 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 District Director* dated October 9, 2002 .

On appeal, counsel contends that the applicant did not commit fraud to gain admittance into the United States, but if the U.S. Citizenship and Immigration Services determines that the applicant did commit fraud, she is entitled to a waiver of inadmissibility because will suffer extreme hardship if the applicant is refused admission to the United States. Counsel submitted a brief, affidavits from the applicant and certificate of Naturalization for birth certificate of the applicant's son, marriage certificate, letter from the applicant's employer, and an unemployment claim receipt of The entire record was considered in rendering this decision.

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:

> 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.

Counsel contends that the applicant did not make the sworn statement attributed to her by the District Director in his decision. The District Director quoted part of a sworn statement dated June 2, 1986 that the applicant made to an immigration officer; the complete sworn statement is part of the record and contains the applicant's description of her attempted entry into the United States. Counsel submitted an affidavit from the

applicant dated November 4, 2002 in which she stated that she does not remember signing such a statement and that it appeared to be an amalgamation of several statements made by others, but that if she did sign the statement, it was because she felt intimidated by the immigration officer. The applicant's allegations in her affidavit do not overcome the specific sworn testimony that she provided to an immigration officer at the time she sought admission to the United States. Additionally, the District Director quoted a sworn statement dated June 5, 1986 that the applicant's aunt made to the same immigration officer that took the applicant's sworn statement. The aunt's complete sworn statement is part of the record and is consistent with the contents of the applicant's sworn statement.

Counsel further asserts that because the applicant provided her real name to the immigration officer at secondary inspections, a timely retraction of the misrepresentation was made. For a retraction to be timely, it must be made at the first opportunity in the same proceedings. 9 FAM Note 4.6 to 22 CFR § 40.63. The applicant did not make a timely retraction. She provided her real name at secondary inspection, which was not the first opportunity that she had to retract the false information.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by [redacted] 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 "is not . . .fixed and inflexible," and whether extreme hardship has been established is 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 (BIA) provided a list of non-exclusive factors to determine whether an alien 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 the 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 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).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact on Mr. [redacted] of the applicant's departure from the United States. Counsel asserts that [redacted] cannot support himself or his children because he is unemployed and the applicant is the primary breadwinner. Counsel submitted a statement from [redacted] in which he stated that he is unemployed and has been out of work for 16 weeks.

Counsel also provided an unemployment claim receipt of The receipt indicates that received $405 in unemployment compensation for the week of September 29, 2002. The receipt does not indicate the length of time has been unemployed or receiving benefits. The record indicates that Mr. had previously worked for several years as a social worker. Counsel submitted no evidence addressing future employment prospects as a social worker or in any other position. Since December 2001, the applicant has worked as a nursing assistant at Heartlands Senior Living Village, but the record contains no documentation of her income. Finally, has the option of moving to Jamaica to be with the applicant. Counsel maintains that would have no employment in Jamaica, but counsel provided no evidence to support this claim. Accordingly, the applicant has not demonstrated that her removal to Jamaica would cause serious financial hardship to

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. Counsel submitted no evidence concerning country conditions in Jamaica, therefore the applicant has not demonstrated that would experience hardship because of country conditions in Jamaica.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. Counsel provided no evidence concerning health, therefore the applicant has not shown that would experience health-related hardship if the applicant were removed to Jamaica.

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. Counsel asserted that the separation of the family would have severe emotional consequences. Counsel does not specify what the possible emotional consequences would be, nor does he provide documentation. Counsel referred to the potential separation of a seven year-old child from his mother, however, the applicant's son is not a qualifying relative for establishing extreme hardship. As a United States citizen, has liberal rights to travel outside the United States and can visit the applicant in Jamaica. Additionally, the record contains no evidence supporting the view that would suffer hardship if he lived in Jamaica with the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion 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. The AAO recognizes that Mr. Gor will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decision of the District Director is affirmed.

ORDER: The appeal is dismissed.