



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 07 2007

IN RE:

Applicant:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 54-year-old native and citizen of Jamaica who was found 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). The record reflects that the applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility in order to remain in the United States with her husband and adjust her status to that of a lawful permanent resident under section 245 of the Act, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on her behalf by his U.S. citizen wife.<sup>1</sup>

The director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. On appeal, the applicant submits an affidavit executed by her husband and additional supporting documentation. The entire record was considered by the AAO in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The director based the finding of inadmissibility under this section on the fact that the applicant entered the United States on October 7, 1993 using a fraudulent passport. The applicant does not dispute this finding. The director's determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . .”

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<sup>1</sup> The AAO notes that a Form I-130, Application for Alien Relative, filed on the applicant's behalf by her previous husband, was denied upon a finding of marriage fraud and that the applicant is therefore subject to section 204(c) of the Act, 8 U.S.C. § 1154(c), which prohibits the approval of any petition on the applicant's behalf.

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute.

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 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 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).

The applicant’s spouse, [REDACTED] is a 56-year-old who became a naturalized U.S. citizen in 1997. The applicant and her spouse were married on June 19, 2003. The record contains an affidavit executed by the applicant’s spouse where he states that he was injured in a work-related accident in 1993 and relies on the applicant for economic as well as emotional support. *See* Affidavit of [REDACTED]. The applicant’s spouse explains that without the applicant’s income, he would lose his home (which the couple purchased in May 2006). *Id.* He states that the applicant drives him to his medical appointment and that, without her, he would have to take a taxi. *Id.* The applicant’s spouse claims that his sole source of income, other than his wife’s contribution, is a Social Security check for \$786 per month. *Id.* The applicant’s spouse explains that he and the applicant recently purchased a restaurant, which the applicant operates. *Id.* The applicant’s spouse claims he would have no one to care for him should the applicant not be allowed to remain in the United States with him.

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 spouse faces extreme hardship. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO has carefully considered the impact of the potential separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9<sup>th</sup> Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3<sup>rd</sup> Cir. 1979). The AAO notes that in *Matter of Pilch, supra*, the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The AAO has also carefully considered the applicant spouse's medical condition, as well as the emotional and economic impact on the applicant's spouse of separation from the applicant. The AAO notes that the applicant does not appear to have any family or employment ties in the United States, and is a native of Jamaica. The record does not contain any evidence that the applicant's spouse could not relocate to Jamaica, or that the medical treatment he requires would be unavailable there. There is also no evidence to establish that the applicant could not subsist financially either in the United States or in Jamaica. The AAO further notes how recently the applicant and his spouse were married, purchased a home, and a restaurant. In this case, the record does not contain sufficient evidence, considered separately and in the aggregate, to show that the hardship faced by the applicant's spouse rises to the level of extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.