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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

Office: NEWARK, NJ

Date: OCT 30 2007

IN RE:

[Redacted]

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey denied the waiver application and 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), for having procured admission into the United States by fraud or willful misrepresentation on December 13, 2001. The applicant is married to a U.S. citizen and has a lawful permanent resident father. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the difficulties experienced by the applicant's spouse as a result of the applicant's departure from the United States did not rise to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated October 28, 2005.

On appeal, counsel asserts that the applicant's spouse and lawful permanent resident relatives would be extremely disadvantaged if the applicant is not allowed to remain in the United States. Counsel also states that the conditions in Jamaica create a harmful and homeless situation for many, and would result in the same for the applicant. *Counsel's Brief*, dated December 19, 2005.

The record indicates that on December 13, 2001, the applicant presented a fraudulent Jamaican passport and B-2 visitor's visa to gain entry into the United States.

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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or other family members experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals 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.

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).

Counsel emphasizes the hardship that will result to the applicant's father because of his medical condition. The record shows that in July 2004, the applicant's father underwent surgery to have two tumors removed from his stomach. *Operative Report from Our Lady of Lourdes Medical Center*, dated July 30, 2004. The applicant's father states that he is a lawful permanent resident and has lived in the United States for twenty years. *Father's Letter*, dated October 20, 2005. He states that he has little to no family in the United States and that the applicant has sole responsibility over him since his surgery. The applicant's father explains that the applicant helps him with his meals, daily living activities, administering medications and taking care of household duties that he is unable to do because of the negative and painful effects from his surgery. *Id.* The AAO notes that the record does not establish that [REDACTED] is the applicant's father and that he is a lawful permanent resident. Accordingly, the only qualifying relative established by the record is the applicant's U.S. citizen spouse.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Jamaica or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel asserts that the applicant and her spouse would suffer extreme hardship as a result of relocating to Jamaica. She indicates that Jamaica's recent hurricane, unemployment rate and weak economy would prevent the applicant and her spouse from finding employment. Counsel also states that rampant crime in Jamaica would make relocation an extreme hardship. *Counsel's Brief*, dated December 19, 2005. In support of these assertions, counsel submits various media articles detailing the crime and violence in Jamaica.

The AAO finds that the current record does not establish that relocation would cause the applicant's spouse extreme hardship. The documentation submitted failed to support the assertions made by counsel regarding Jamaica's unemployment rate and that persons in the same career fields as the applicant and her spouse would not be able to find employment in Jamaica. In addition, although the media articles report on the efforts being

made to reduce the level of violence in high crime areas in Jamaica, the record does not establish that the applicant and her spouse would have to relocate to a location where the crime rate is high.

Counsel also asserts that the applicant's mother-in-law suffers from cancer and would experience hardship if the applicant is removed. The AAO again notes that only hardship to the applicant's qualifying relatives is considered in section 212(i) waiver proceedings unless it is shown that hardship to another family member is causing hardship to a qualifying relative. In this case, the record offers no evidence to establish that the claimed hardship to the applicant's mother-in-law would result in hardship to the applicant's spouse.

The record includes a letter from the applicant's spouse stating that he will suffer emotional and financial hardship if the applicant is returned to Jamaica. He explains that the applicant is very supportive in many ways and that the applicant, as a nursing assistant, helps to care for his mother, who has been suffering from stomach cancer since 1987. *Spouse's Letter*, dated October 17, 2005. He states that without the applicant's help they would have to pay for a caretaker for his mother. In an earlier statement the applicant's spouse indicated that the applicant means the world to him and has given him peace and joy. *Spouse's Statement*, undated.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record does not establish that these hardships rise to the level of extreme hardship.

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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.