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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 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 is the spouse of a U.S. citizen and 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 with his spouse.

The 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 Director*, dated July 31, 2006.

On appeal, counsel asserts that the applicant and his family would suffer extreme hardship if the applicant is refused admission into the United States. *Form I-290B*, received August 30, 2006.

The record includes, but is not limited to, statements from the applicant's spouse, the applicant's spouse's medical records, the applicant's statement and the applicant's financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was admitted to the United States under an assumed identity in 1976. As a result of this misrepresentation, the applicant is inadmissible to 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.

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 extreme hardship on a 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 non-exclusive factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether she relocates to Jamaica or remains in the United States, as there is no requirement that she reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Jamaica. The applicant's spouse states that Jamaica has high levels of poverty, unemployment is a very big problem, she can no longer work due to her physical state, and there are inequalities in access to and utilization of health services. *Applicant's Spouse's Third Statement*, at 1-2, dated May 23, 2007. The applicant's spouse details problems in Jamaica such as gang violence, drug smuggling and money laundering. *Id.* at 2. The applicant's spouse states that the applicant has severe lung problems, Type I diabetes and high blood pressure, and that his health would be in danger in Jamaica. *Applicant's Spouse's Second Statement*, at 1, dated August 25, 2006. The record does not include substantiating evidence of the applicant's spouse's claims concerning safety issues in Jamaica, the financial hardship that would result on relocation, the applicant's medical problems or the lack of appropriate medical services in Jamaica. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes the claims made by the applicant's spouse regarding the impact of relocation on the applicant's health, but observes that hardship experienced by the applicant as a result of removal is not considered in section 212(i) waiver proceedings except as it affects the qualifying relative. The record does not, however, address how the applicant's medical condition would affect his spouse if she were to move to Jamaica with him.

The applicant's spouse states that she was recently run over, she was hospitalized for two months, she will never be able to walk again without assistance, she will have access to physical rehabilitation and therapy in the United States, she would not have access to such treatment Jamaica, and her health and physical status would worsen. *Applicant's Spouse's Third Statement*, at 1. The record reflects that the applicant's spouse was hit by an automobile and seriously injured her left leg and it establishes that her doctor concluded that her recovery would require four to six weeks of physical therapy and six to eight weeks of leave from work. *Certificate of Health Care Provider*, at 1-2, dated April 10, 2007. The AAO notes that the record does not reflect that the applicant's spouse is permanently disabled or that she continues to require physical therapy or medical treatment due to her accident. After a thorough review of the record, the AAO finds that extreme hardship has not 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 states that she has been married to the applicant for over 20 years and she needs him to take care of her. *Applicant's Spouse's Third Statement*, at 1-2. The applicant's spouse states that she cannot imagine being separated from the applicant, he has been the primary wage earner for most of their marriage, she relies on his income to meet their obligations, and his stepdaughter and her family will experience extreme sadness if he is removed. *Applicant's Spouse's First Statement*, at 1, dated July 6, 2005. The applicant states that he and his spouse have a mortgage, car payments, and other commitments such as insurance. *Applicant's Statement*, dated January 24, 2001. The record includes evidence of the applicant's and his spouse's financial commitments. The applicant states that his spouse would not be able to afford the life to which she has become accustomed. *Id.* The AAO finds that insufficient evidence has been submitted to establish that the applicant's spouse would experience extreme hardship if she remains in the United States without 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that a review of 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(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.