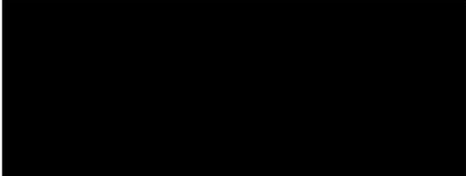


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FILE:



Office: KINGSTON, JAMAICA

SEP 17 2007  
Date:

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 waiver application was denied by the Officer-in-Charge, Kingston, Jamaica. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

The AAO notes that the applicant's Form I-290B, Notice of Appeal to the Administrative Appeals Office, was submitted by a [REDACTED]. The record does not identify [REDACTED] as an attorney or an authorized representative. As a result, the applicant will be considered to be self-represented.

The officer-in-charge found that the record did not contain persuasive information or documentation that the applicant's qualifying relatives in the United States were going through difficulties that justify removing the bar that renders the applicant inadmissible to the United States. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated August 31, 2005.

On appeal, the applicant submits additional evidence regarding extreme hardship. *Letter from Applicant's Appointed Representative*, October 24, 2005.

The AAO notes that the Officer-in-Charge's Decision referenced section 212(a)(6)(C)(i) of the Act in discussing the applicant's waiver application. Section 212(a)(6)(C)(i) of the Act applies to applicants who have made a misrepresentation in entering or attempting to enter the United States. The applicant, however, has been found to be inadmissible for unlawful presence under section 212(a)(9)(B) and therefore, must apply for a waiver under section 212(a)(9)(B)(v) of the Act.

In the present application, the record is unclear as to the applicant's manner of entry. The record includes a Seafarer's identity document in the applicant's name, but no record of a legal entry into the United States with an authorized period of stay. The record does indicate that she entered the United States on September 26, 1997. The AAO notes that the accrual of the applicant's unlawful presence will begin on September 26, 1997 as she has not provided documentation establishing that she was granted an authorized period of stay. The applicant remained in the United States until July 26, 2004. Therefore, the applicant accrued unlawful presence from when she entered the United States on September 26, 1997 until July 26, 2004, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her July 26, 2004 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or her children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except as it affects the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

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 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Jamaica. The applicant states that her youngest child was born with a heart murmur and is becoming more sick than usual and does not have established medical care in Jamaica. *Applicant's Statement*, dated September 21, 2005. The applicant's spouse indicates that he is seriously concerned about the health of his children in Jamaica and that his youngest child has been missing her pediatric cardiology appointments. *Spouse's Statement*, dated October 28, 2004. In support of the health concerns voiced by both the applicant and her spouse, the record offers three medical letters. [REDACTED] located in the United States, states that the applicant's daughter was born with a heart murmur that she states is most likely "an innocent murmur of childhood." She states that she recommends the applicant's daughter be re-evaluated by a pediatric cardiologist in 4 months. *Letter from [REDACTED]*, dated March 18, 2004. The second medical letter is from [REDACTED] who is located in Jamaica. [REDACTED] states that he has treated the applicant's daughter for asthmatic bronchitis and timea corporis. He states that the applicant's daughter has a history of cardiac murmur and ventricular septal defect. He also states that he supports the applicant's daughter's supervision in the United States. *Letter from [REDACTED]* dated October 24, 2005. A third letter, written by [REDACTED] Zalitis of the Community Health Center, Inc. in New Britain, Connecticut, reports that both of the applicant's children have heart murmurs, that they are overdue for their health reviews and that the best medical care for both children would be provided in the United States at the Community Health Center. *Letter from [REDACTED]* dated December 22, 2005. While the AAO finds these letters to establish that one or both of the applicant's children have a heart murmur for which they have been treated in the United States, they do not indicate that appropriate medical care is unavailable to them in Jamaica. Furthermore, hardship the applicant's children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that the children's hardships are causing hardship to the applicant's spouse. In the present case, the applicant has submitted no documentary evidence, e.g. an evaluation from a licensed medical professional, to establish that were the applicant's spouse to relocate to Jamaica, his concerns over the medical treatment available to his children in that country would constitute an extreme emotional hardship for him.

The applicant's spouse does not address the possibility of his relocating to Jamaica to live with his family. Thus, the AAO finds that the applicant has not established that her spouse would suffer extreme hardship as a result of relocating to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant states that her spouse is suffering financially because he is working to support two households. *Applicant's Statement*, dated September 21, 2005. A letter from the applicant's spouse's employer, Payless Shoe Source, states that starting in January 2005 the applicant has been more stressed at work and his performance is suffering. The employer states that if the applicant's spouse's performance continues to worsen then his job may be in jeopardy. *Letter from Employer*, dated October 10, 2005. The applicant's spouse states that it is very hard living without his spouse and children and that it is very stressful for him to support himself and his family in Jamaica. *Spouse's Statement*, dated October 17, 2005. The applicant's mother-in-law also submitted a statement expressing concern for her son's

stress level and finances. Letter from [REDACTED] dated October 18, 2008. In support of the financial hardships being experienced by her spouse, the applicant has submitted copies of his hospital bills following an automobile accident, utility bills, credit card balances, mortgage payments, automobile insurance payments and a delinquency notice in relation to a water bill. However, she has provided no information to establish the income earned by her spouse. Accordingly, the AAO finds that the record lacks the documentation necessary to determine the applicant's spouse's financial hardships. While the AAO recognizes that the applicant's spouse is experiencing hardship as a result of being separated from his family, it does not find the current record to establish that this hardship rises to the level of extreme. Therefore, the applicant has not demonstrated that separation would result in extreme hardship to her spouse.

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 (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(a)(9)(B) 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.