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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK, NY Date:

SEP 24 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 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 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 July 2, 1998. The applicant is married to a U.S. citizen and has seven children. 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 applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Director*, dated January 25, 2006.

On appeal, counsel asserts that none of the cases cited by the Service apply to the applicant's situation or support a denial in her case. Counsel also asserts that the hardships the applicant's spouse would suffer as a result of the loss of his wife are extreme, as it would effect his medical condition, his ability to bring in income and the kind of home he could provide for their children. *Counsel's Brief,* dated June 2, 2006.

The record indicates that on July 2, 1998, the applicant entered the United States as a B-2 visitor under the name Violet Duval, born on November 29, 1964.

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 herself experiences or her children 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.

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).

If extreme hardship to a qualifying relative is established, in this case the applicant's spouse, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; s*ee also Matter of Mendez-Moralez,* 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.

On appeal, counsel presents the health of the applicant's spouse as the underlying basis for the applicant's claim that he would experience extreme hardship in the event that her waiver request were to be denied. Counsel states that the malignant hypertension or high blood pressure from which the applicant's spouse suffers would make it an extreme hardship for him to relocate to Jamaica or to remain in the United States following applicant's removal. Counsel specifically points to the role that the applicant plays in maintaining her husband's health, his inability to care for their children in her absence and the health and employment impacts on the applicant's spouse if he moved to Jamaica. *Counsel's Brief,* dated June 2, 2006.

In considering counsel's assertion that the applicant's spouse would be unable to care for their children in his wife's absence, the AAO notes that the record includes a birth certificate from Jamaica for [redacted], dated September 27, 1991, naming the applicant's spouse as the father and a [redacted] as the mother; a birth certificate from Jamaica for [redacted] from December 12, 1993, naming the applicant's spouse as the father and a [redacted] as the mother; and a death certificate from Jamaica for [redacted] dated June 25, 2002. *See Exhibit H.* The applicant's spouse indicates that he is in the process of bringing both children to the United States. The psychological report submitted by [redacted] Silver states that the applicant and her spouse have seven children, three of whom legally reside in the United States and four

who will soon relocate to the United States as lawful permanent residents [redacted] *Report*, dated May 30, 2006. While the AAO acknowledges the claims regarding the impending arrival of four of the applicant's children in the United States, the record offers no documentary evidence that any of the four are in the process of immigrating. Moreover, it also fails to demonstrate that any of the children [redacted] indicates are living in the United States reside with their parents or are dependent on them. The record contains an affidavit submitted by [redacted] the couple's adult daughter, who states that she resides at another address. The 2002-2005 joint federal tax returns filed by the applicant and her spouse list no dependents. Accordingly, the record does not establish that the applicant's spouse would have the responsibility of caring for a household of children were the applicant's waiver request to be denied. Neither does it provide any documentary evidence to support the claim that one of the applicant's spouse's daughters is deaf and mute. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *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)).

Counsel asserts that the applicant's spouse's medical condition requires the applicant to help him with the daily stresses of running a home and with taking his medications. *Counsel's Brief*, dated June 2, 2006. The record includes a medical note from [redacted] who states that the applicant's spouse is currently under his care for malignant hypertension and is taking three medications for this condition. [redacted] also states that the applicant's spouse's hypertension problems may be closely related to stress and family problems and that he often needs his wife's moral support to relieve him of stressful situations. *Letter from* [redacted] dated May 22, 2006. The medical note does not however, indicate the severity of the applicant's spouse's medical condition nor the extent to which it affects his ability to perform daily responsibilities, including whether he requires the assistance of the applicant to perform them. Accordingly, the applicant has not demonstrated that her husband's health would be compromised if her waiver application were to be denied and he remained in the United States.

The record also shows that the applicant's spouse owns a moving and delivery business, named Mr. [redacted] dated February 27, 2006. Counsel states that without the applicant at home taking care of their children and specifically assisting with raising the applicant's spouse's two daughters, he could not continue to run his business. *Counsel's Brief*, dated June 2, 2006. Again, the AAO notes that the record does not indicate that the applicant's spouse's children will be relocating to the United States in the near future and/or that his one adult daughter living in the United States requires the applicant's assistance. Therefore, counsel's assertions that the applicant's spouse would lose his business were the applicant unavailable to care for his children is not supported by the record.

As stated above, counsel submitted a psychological report from [redacted] conducted an interview with the applicant and her spouse on May 30, 2006. He found that both the applicant and her spouse were suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood. [redacted] *Report*, dated May 30, 2006. He states that they both are suffering from psychosocial issues because of the applicant's immigration case and the health and safety of the applicant's spouse and their children. *Id.* [redacted] states that the applicant's spouse fears the emotional despair he would endure if the applicant is removed from the United States and that he may die if he relocates to Jamaica due to the poor healthcare and medical system. *Id.* [redacted] states that in relocating to Jamaica, the applicant's spouse's mental health issues will undoubtedly worsen and prohibit him from attending to the normal emotional, physical and instrumental needs of himself

and his children. [redacted] states that in Jamaica the applicant's spouse would face a foreign culture and restrictions on his actions, family loss, employment limitations, possible poverty, a dangerous environment, and healthcare and social service delivery scarcity. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on one interview between the applicant, her spouse and [redacted]. Accordingly, the conclusions reached in the report do not reflect that insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. Further, as the record does not establish [redacted] as an expert on country conditions in Jamaica and he submits no documentation to support his statements, his conclusions regarding the employment limitations that would be faced by the applicant's spouse upon relocation, as well as the scarcity of health care and social services available to him will be discounted.

On appeal, counsel contends that if he relocated to Jamaica, the applicant's spouse has children and grandchildren in the United States and relocating to Jamaica would forced him to leave his family, medical care, and employment. *Counsel's Brief*, dated June 2, 2006. Counsel asserts that the financial impact of relocating the entire family to Jamaica would be devastating. *Id.* The AAO notes that no country reports were submitted to support the assertions regarding the employment and health care conditions in Jamaica. Nor does the record contain evidence to demonstrate the financial impact of relocation on the applicant's spouse. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

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.