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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: JAN 16 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 December 15, 1997. The applicant is married to a U.S. citizen and has two U.S. citizen 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 her spouse would suffer extreme hardship as a result of her inadmissibility to the United States. The application was denied accordingly. *Decision of the Director*, dated June 5, 2006.

On appeal, counsel submits additional documentation of extreme hardship, including, a psychological evaluation, a statement from the applicant's spouse and birth certificates for the applicant's two U.S. citizen children.

The record indicates that on December 15, 1997, the applicant presented a fraudulent British passport to gain entry into the United States. The applicant has not disputed that she is inadmissible under Section 212(a)(6)(c) of the Act.

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

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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Jamaica and in the event that he remains 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.

In an affidavit submitted with the applicant's waiver application, the applicant's spouse states that the applicant has been his emotional and physical support from the time they met in 1994 and that his well-being is critically dependent on her. *Spouse's Affidavit*, dated September 14, 2005. He states that the applicant has been very supportive in all that they do and that her continued moral and financial support are important to their economic future because they are planning to buy a home. The applicant's spouse states that he will suffer irreparable emotional and physical distress if the applicant does not obtain permanent resident status. He states that during their years together, the applicant has been the only one who has helped him maintain his health, eat right and devote time to religious worship. He states that despite her heavy schedule, she always maintains a clean, comfortable home and was there for him in every way. He also states that because his wife's immigration status has not been resolved he is deteriorating physically and mentally. *Id.*

In a letter submitted on appeal, the applicant's spouse states that the applicant has been a great mother to their two children and that if the applicant has to return to Jamaica he will suffer emotional, mental, psychological and financial hardship. *Spouse's Letter*, dated July 12, 2006. He states that after he received the denial of the applicant's waiver application, he has been having

sleepless nights and has lost his appetite. He states that he must force himself to eat and vomits. He states that he cannot perform his duties properly at work, he is always sad, he has become nervous and forgetful, and he has lost his focus and concentration. The applicant's spouse explains how the applicant supports their children and plays a major role in their lives. He states that his work schedule prevents him from attending and participating in events that shape the lives of his children, but that the applicant is always able to attend. The applicant's spouse states that the applicant also helps with the finances of the family and that if she is removed to Jamaica, his income alone will not be enough to support the family. He also states that he is concerned that his children will fall behind in school with the applicant not in their lives, especially because his one child suffers from a learning disability and is in special education classes. He states that other family members will not be able to help him in his wife's absence. He states that they may be able to help initially, but that after time it will just become a problem for them. The applicant's spouse also states that he would not be able to send his children to live in Jamaica with the applicant because the cost of living and the crime rate is high and the country has poor medical treatment. *Id.*

The applicant states that she and her spouse work together to make a loving and supportive home for their children and that she will suffer extreme hardship if her waiver application is denied. *Applicant's Affidavit*, September 14, 2005. She states that she will be devastated if she is separated from her spouse because they are working together to buy a home and that they have helped each other through this emotional ordeal. She states that her spouse will lose all emotional and financial support and she dreads the thought of what his life will become without her. *Id.*

Counsel also submits a psychological evaluation by [REDACTED]. Dr. [REDACTED] interviewed the applicant's spouse on July 6, 2006. *Psychological Evaluation*, dated July 7, 2006. During this clinical interview, [REDACTED] states that he conducted a mental status exam and the Symptom Checklist 90 Revised, a clinical instrument used to determine various clinical symptom types and which has been shown to distinguish anxiety disorders from other mental disorders. [REDACTED] observed that the applicant's spouse's flow of speech was slowed by memory difficulties for historical facts and dates due to what seemed to him to be a moderate clinical depression. [REDACTED] states that the applicant's spouse's mood was generally depressed and anxious and his affect varied from flat to sad to angry depending on the nature of the discussion. The applicant's spouse reported to [REDACTED] that the applicant is emotionally and financially attentive to their son, who requires long hours of tutoring because of academic difficulties. The applicant's spouse states that he works long hours and feels peaceful in the United States because he is able to support his family better than he could in the Caribbean. He stated that he has nothing to go back to in Jamaica and he requires the applicant's help with financing and with parental responsibilities.

The applicant's spouse complained to [REDACTED] about the stressfulness of his day-to-day life since the applicant's waiver application was denied. He stated that he has become insecure and is always anxious. He states that he sometimes becomes tearful or angry about losing his wife. The applicant's spouse reported to [REDACTED] that he has lost weight due to a poor appetite, that his sleep is impaired, he has lost his libido and he avoids social opportunities. He stated that he had grave concerns about fulfilling his role as head of the household and his work performance has suffered. [REDACTED] found that the applicant's spouse's symptoms seem to be moderate in general, but that he is suffering from

extreme anxiety and moderate clinical depression. He states that it is likely that the depression will become worse if the applicant is removed from the United States. [REDACTED] states that in addition to being separated from the applicant, the applicant's spouse also faces the dilemma of returning to Jamaica with its limited resources and poverty. The applicant's spouse states that he feels very insecure about returning to his country of origin or taking his family there where the opportunities are limited. [REDACTED] states that the applicant's spouse's current insecurity makes life planning very difficult and a recovery from clinical depression difficult as it is doubtful that in Jamaica he will receive adequate psychotherapy. [REDACTED] recommends that the applicant's spouse begin psychotherapy and that the removal of the applicant would cause the applicant's spouse extreme mental hardship. *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's spouse and [REDACTED]. [REDACTED] recommends that the applicant's spouse begin psychotherapy for his symptoms, but the record does not include any documentation showing that the applicant's spouse is receiving ongoing treatment. Accordingly, documentation of the applicant's spouse's mental health does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and as such is of diminished value in determining extreme hardship. In addition, the record does not include any documentation regarding the applicant's spouse's son's learning disabilities, the care and attention his son requires because of these disabilities and how the applicant's spouse will suffer extreme hardship in regards to his son in the absence of the applicant. Furthermore, the record does not include documentation establishing country conditions in Jamaica.

Going on record without supporting documentary evidence is not sufficient for the 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)). The applicant must submit documentation to support her claims and the claims of her spouse. For these reasons, the AAO finds that the current record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

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.