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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: JUN 01 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, PA. A motion to reopen was filed on August 30, 2005 and subsequently dismissed by the district director on April 16, 2008. Additionally, counsel for the applicant filed an appeal on August 24, 2005 which is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, a native and citizen of Jamaica, was found 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 entry to the United States by fraud and/or willful misrepresentation. The applicant sought a waiver of inadmissibility in order to be able to remain in the United States with her U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated July 28, 2005.

In support of the appeal, counsel for the applicant submits the following: a brief, dated August 24, 2005; medical and academic documentation pertaining to the applicant's U.S. citizen child, [redacted]; and information about country conditions in Jamaica. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

Regarding the district director's finding that the applicant was inadmissible under Section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, the record establishes that the applicant procured entry to the United States in 1997 using a passport and visa belonging to another individual. The district director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act, for having procured entry to the United States by fraud and/or willful misrepresentation. On appeal, the applicant does not contest this finding of inadmissibility.

The record also establishes that the applicant was convicted of Retail Theft, a summary offense in violation of section 3929(a)(1) of the Pennsylvania Criminal Code, based on a June 2000 incident; no prison sentence was imposed.

Section 212(a)(2) of the Act provides, in pertinent part:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> . . . .
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

With respect to the applicant's conviction for retail theft, a crime involving moral turpitude, the AAO finds that said conviction falls within the petty offense exception of INA § 212(a)(2)(A)(ii)(II), as the maximum penalty possible for her specific conviction does not exceed imprisonment for one year. As such, the applicant is not inadmissible for having been convicted of Retail Theft. Irrespective of this issue, the AAO has determined that the applicant's fraud and/or willful misrepresentation when procuring entry to the United States, as discussed above, automatically renders her inadmissible under section 212(a)(6)(C) of the Act. The applicant is eligible to apply for a section 212(i) waiver.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident

spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative for purposes of a 212(i) waiver, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The applicant's U.S. citizen spouse asserts that he will suffer extreme emotional and financial hardship were he to reside in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship he has with the applicant, and he would suffer extreme emotional hardship were he to be separated from his children in the event they relocated abroad to reside with the applicant, as he has a close relationship with them as well. *See Letter from* [redacted] dated January 21, 2005. In addition, counsel notes that one of the applicant's children, [redacted], is disabled and needs specialized treatment, medically and in school; he has been diagnosed with severe receptive language disorder and expressive language disorder. Direct language intervention, parental observation in weekly interventions and parental education has been recommended. *See Letter from* [redacted] *M.S., CCC, Speech-Language Pathologist, Speech and Hearing Center,* dated February 4, 2004.

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if he remained in the United States while the applicant relocated to Jamaica. Due to the extraordinary demands placed upon the family by [redacted] learning disability, the applicant's spouse

would be required to assume the role of primary caregiver and breadwinner to his children, one with a serious disability that requires significant parental involvement, without the complete emotional, physical, financial and psychological support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the constant monitoring and supervision the children require while the applicant works outside the home, an additional expense for the applicant's spouse. The applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse. As such, were the applicant removed, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The only documentation to establish extreme hardship to the applicant's spouse were he to relocate to Jamaica, his birth country, are general articles describing the country conditions in Jamaica. Although the AAO recognizes that Jamaica has been impacted by crime, the U.S. Department of State has not issued any type of warning against travel to the Jamaica; as such, it has not been established that the applicant's spouse would experience extreme hardship were he to relocate to Jamaica to reside with the applicant. *See Country Specific Information-Jamaica, U.S. Department of State,* dated February 26, 2009. Moreover, although counsel contends that [redacted] can not get the type of medical treatment and specialized educational programs he needs if he were to relocate to Jamaica with the applicant, thereby causing the applicant's spouse extreme hardship, no corroborating evidence has been provided to document that the applicant's child's disabilities would worsen in Jamaica to an extent that would cause extreme hardship to the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face

no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant is eligible for a waiver under section 212(h) of the Act and/or whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.