U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BALTIMORE Date: JUN 15 2009

IN RE: Applicant: [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 or reopen, 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 District Director, Baltimore, Maryland, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The district director concluded that the applicant 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 District Director*, dated September 26, 2006.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated March 23, 2007.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's wife, the applicant's stepdaughter, the applicant's father-in-law, the applicant's sister-in-law, and the applicant's sisters; a copy of the applicant's passport and B visa; a copy of the applicant's marriage license; documentation regarding the applicant's wife's employment; copies of birth certificates for the applicant's children; tax records for the applicant's wife; a psychological evaluation of the applicant's wife; and documentation regarding the applicant's presentation of a fraudulent passport upon his attempted entry to the United States. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on April 1, 1997 the applicant attempted to enter the United States using a passport with his photograph substituted for the original. He was removed to Jamaica on April 22, 1997. He reentered on September 9, 1997 using a B visa that was issued on March 25, 1997, prior to his attempted entry on April 1, 1997. The applicant married his U.S. citizen wife on March 8, 2002 and he seeks to adjust his status to permanent resident. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation.

The applicant stated that he presented a fraudulent passport due his need to flee Jamaica quickly. *Statement from the Applicant*, at 3, dated January 14, 2005. He indicated that he had a valid B visa in his true passport, but that he witnessed a gang murder and could not return to his home for fear of harm. *Id.* He explained that upon examining his fraudulent passport an immigration officer referred him to secondary inspection where it was determined that his documents were fraudulent. *Id.* The applicant stated that he revealed the above facts to inspectors, including the reason he obtained fraudulent travel documents. *Id.*

The applicant suggested that he did not commit misrepresentation due to the fact that he revealed the truth regarding his use of fraudulent travel documents. Yet, the record reflects that the applicant first attempted to use his fraudulent documents to gain entry, and he only divulged his true identity after inspectors detected his attempted fraud and misrepresentation. Thus, the applicant has not shown that he did not make a misrepresentation or use fraud.

The applicant presented a copy of a B visa in his true passport that bears an issuance date of March 25, 1997, prior to his attempted entry on April 1, 1997. However, as the applicant did not have his true passport or B visa in his possession when he attempted to enter the United States, he would not have been admitted had he revealed his true identity. Thus, his fraud and misrepresentation was material, as he would not have been admissible based on the true facts.

As noted above, the applicant entered the United States on September 9, 1997 using his B visa. However, due to his removal on April 22, 1997 he was inadmissible for five years under section 212(a)(9) of the Act. The record does not show that the applicant filed a Form I-212 application for permission to reenter after deportation. Thus, the record suggests that the applicant committed further misrepresentation in failing to reveal that he had been removed on April 22, 1997 when he entered on September 9, 1997.

Accordingly, the applicant was properly found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation.

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 an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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, 565-566 (BIA 1999) provides a list of 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 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.

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).

On appeal, the applicant states that his wife and children will experience emotional and economic hardship if he is compelled to depart the United States. *Statement from the Applicant* at 4. He indicates that he serves as a father figure to his two stepsons and stepdaughter, and that he does not wish to have them lose the presence of a father in their household. *Id.* He states that he is a role model, "breadwinner," and loving father and husband for his family. *Id.*

The applicant described his participation in community service, including youth programs and computer classes. *Id.* at 4-5.

The applicant's wife stated that she has known the applicant for approximately six years, and that she met him when she was a single mother with three children and a part-time college student with employment. *Statement from the Applicant's Wife*, dated April 6, 2004. She explained that she lost her mother prior to meeting the applicant. *Id.* at 1. She provided that her children have a close relationship with the applicant. *Id.* She indicated that the applicant assisted her father when he was ill with colon cancer. *Id.* at 1-2. She expressed that she would have difficulty maintaining a long-distance relationship with the applicant. *Id.* at 2.

The applicant's wife stated that she was born in Jamaica and she came to the United States at age seven. *Additional Statement from the Applicant's Wife*, dated March 21, 2007. She stated that she has little ties to Jamaica, with only three aunts residing there with whom she has maintained contact. *Id.* at 4. She asserted that Jamaica is poor and she would never wish to resettle there and subject her children to harsh conditions. *Id.* at 5. She indicated that her brother was murdered in Jamaica and no one has been held accountable. *Id.* at 4-5. She stated that she has extensive ties to the United States including her children, her sister, her ill father, her church community, her employment of 16 years with benefits, and her extended family including aunts, uncles, and cousins. *Id.* at 5.

The applicant's wife noted that her daughter and older son are attending college, and that her younger son attends high school. *Id.* at 4. She explained that her daughter and younger son reside with her and the applicant. *Id.*

The applicant's sisters attested to the applicant's good character and participation with his wife and stepchildren. *Statements from the Applicant's Sisters*, undated.

The applicant submitted documentation to show that his wife earned $46,824.64 for the 2003-04 school year as a permanent, full-time administrative secretary for the Montgomery County Public Schools, Maryland.

The applicant provided a psychological evaluation of his wife, conducted by [redacted] based on eight and one-half hours of evaluation for the purpose of assessing hardship to the applicant's wife should the applicant depart the United States. *Report from* [redacted], dated March 21, 2007. [redacted] indicated that the applicant's wife is suffering from depression due to her personality factors and major depressing factors in her life, and that he diagnosed her with Major Depressive Disorder, Single Episode. *Id.* at 2, 22-23. [redacted] recounted the applicant's wife's history. *Id.* at 2-8.

Counsel contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated March 23, 2007. Counsel asserts that the applicant's wife has strong family ties to the United States, and that such ties limit her ability to relocate to Jamaica. *Id.* at 2. Counsel asserts that denial of the present application would result in "devastating psychological impact and severe hardship on [the applicant's wife's] mental health, in light of her depression and history of loss of those close to her." *Id.* at 5. Counsel contends that the present case presents issues of health, as the applicant's father-in-law went through colon cancer surgery and chemotherapy and he has chronic renal failure with dialysis and diabetic neuropathy. *Id.* at 6.

Counsel asserts that the applicant's wife will suffer economic consequences should the applicant depart. *Id.* at 7. Counsel contends that the applicant's two children in college would be unable to attend without the applicant's assistance. *Id.* at 8.

Counsel asserts that conditions are harsh in Jamaica, thus it is reasonable that the applicant's wife has concerns for safety there. *Id.* at 9-10.

Counsel notes that the applicant's business in the United States provides employment for U.S. workers, and that his company provides quality services for his community. *Id.* at 10.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. Counsel contends that the applicant's wife will experience economic hardship if the applicant is compelled to depart the United States and she remains. Yet, the applicant has not submitted sufficient evidence to show that his wife relies on his economic contribution. Specifically, the applicant has not stated his income or provided documentation to show actual transactions, profits, or prospective business of his company. Thus, the AAO is unable to determine the level of economic support the applicant provides. Nor has the

applicant submitted an account of his household's regular income needs, such as documentation of a mortgage. While the applicant's wife stated that she and the applicant assist her two older children with college tuition, the applicant has not indicated the amount they provide, or submitted documentation to reflect their support. The applicant has not established that his two older stepchildren require his support, or that they are unable to obtain student loans to meet any shortfall they have. Thus, the applicant has not shown by a preponderance of the evidence that his wife will experience significant economic hardship should he depart the United States and she remain.

The applicant's wife suggests that she will experience emotional hardship should the applicant depart the United States and they become separated. The AAO acknowledges that the separation of spouses due to inadmissibility often creates significant emotional hardship. However, the applicant has not distinguished his wife's emotional hardship from that which is commonly experienced by those separated from family due to the inadmissibility of a spouse.

The AAO has examined the report from [redacted]. It is noted that the report was generated for the purpose of the present proceeding, thus it does not represent treatment for a mental health disorder or an ongoing relationship with a mental health professional. [redacted] stated facts as recounted by the applicant's wife. While [redacted] concluded that the applicant's wife exhibits symptoms of major depressive disorder, single episode, he did not clearly indicate the impact the applicant's wife's condition has on her ability to function and meet her needs. Nor did he state that she requires follow-up evaluation or care. Thus, while the AAO values the opinion of a medical professional, Dr. [redacted]s report does not reflect that the applicant's wife is experiencing emotional hardship that rises to the level of extreme hardship.

The applicant's wife suggested that her emotional hardship has been increased due to the deaths of her mother and brother. Yet, the applicant has not submitted death certificates or other information about either relative.

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.

The record contains descriptions of emotional hardship that the applicant's stepchildren may face should he depart the United States. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the

applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The AAO acknowledges that the applicant shares a close relationship with his three stepchildren and that they will endure emotional consequences if they no longer see him on a regular basis. However, the applicant has not shown that his stepchildren would face consequences to a degree that will elevate his wife's emotional hardship to extreme hardship.

The record reflects that the applicant has assisted his father-in-law during times of serious illness. It is reasonable that such assistance relieved the emotional burden on the applicant's wife. Yet, the applicant has not shown that his father-in-law presently requires his assistance, or that any emotional challenges his father-in-law may face due to the applicant's absence can be distinguished for that ordinarily expected when family members are separated. The applicant has not shown that his wife will experience significant additional hardship due to her father's loss of the applicant's daily presence.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife is experiencing emotional hardship that constitutes extreme hardship. The applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife should she remain in the United States. Section 212(i)(1) of the Act.

The applicant has shown that his wife will experience significant hardship should she relocate to Jamaica. The AAO acknowledges that economic conditions are difficult in Jamaica. Should she relocate there, the applicant's wife would face the loss of her lengthy, stable employment in the United States. While the record does not contain a clear account of the applicant's family's economic resources, it is evident that the applicant's wife would experience some financial hardship should she relocate.

The applicant's wife has numerous relatives in the United States, including her three children and her father who is ill. The record does not reflect that the applicant's two adult children or father would relocate with her, thus she would likely be separated from them which would involve emotional hardship. The applicant has shown that his wife is involved in her community through volunteer and religious activities, and it is reasonable she would experience emotional hardship should she depart as a result.

The applicant's wife is a native of Jamaica, yet she departed when she was seven years old. Thus, it is evident that she would face some challenge in adjusting back to life there. The applicant's wife indicated that her brother was murdered in Jamaica when he visited there. While the applicant has not provided documentation to support this event, the AAO gives consideration to the emotional consequences the applicant's wife would face by relocating to a country where her brother was allegedly killed.

All elements of hardship to the applicant's wife have been considered individually and in the aggregate. Despite hardship the applicant's wife would face should she relocate to Jamaica, the applicant has not shown that his wife will face extreme hardship should she remain in the United States. As a U.S. citizen, the applicant's wife is not required to reside outside the country due to the applicant's inadmissibility. Thus, the applicant has not shown that denial of the present waiver

application "would result in extreme hardship" to his wife. Section 212(i)(1) of the Act. 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)(1) 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.