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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 21 2009

IN RE: [redacted]

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

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 District Director, Miami, Florida. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a crime involving a controlled substance. The applicant is the spouse of a naturalized U.S. citizen, the stepfather of a U.S. citizen and son of a naturalized U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 22, 2007.

On appeal, counsel states the applicant has established that his spouse will suffer extreme hardship.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

> (1) Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any 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) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that the applicant was convicted of Possession of Marijuana, (under 20 grams) Florida Statutes § 893.13, on June 7, 2001, in Miami-Dade County, Florida Circuit Court. [redacted]. Thus the applicant has been convicted of a crime involving a controlled substance, and is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse, mother and child are the qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 a qualifying relative should be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence: counsel's brief; statements from the applicant, his spouse and his mother; copies of naturalization certificates for the applicant's spouse and mother; letters of employment verification for the applicant and his spouse; court records for the applicant's conviction; a medical statement regarding the applicant's mother-in-law's medical condition and needs for a caregiver; birth certificates for the applicant and his spouse; and tax records.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant's spouse will suffer extreme financial and emotional hardship if the applicant is excluded, and notes that the applicant provides 50 percent of the household's income, that the applicant and his spouse have a six-year-old son for whom they care and that the applicant's spouse is caring for her mother who is currently being treated for breast cancer. Counsel further states that the applicant's spouse has no close relatives in Jamaica, that the applicant would be unable to find commensurate employment in Jamaica, and that based on the conditions in Jamaica it would be an extreme hardship for the applicant's spouse, son and mother-in-law to relocate to Jamaica.

Although counsel claims that conditions in Jamaica would result in extreme hardship to the applicant's family and quotes from what he indicates is the section on Jamaica from the Department of State Country Reports on Human Rights Practices released in March 2006, the AAO notes that the record does not support such a finding. The record contains no documentary evidence, e.g., published country conditions materials, to support counsel's statements regarding life in Jamaica. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

The record includes a letter from [redacted] stating that the applicant's mother-in-law is being treated for breast cancer, that she is weak from the chemotherapy and requires assistance with her daily activities, as well as emotional support. [redacted] also states that the applicant's spouse accompanies her mother on all her visits. Counsel asserts that the applicant's spouse has no other family aside from her mother, her son and the applicant in the United States. However, the applicant's spouse's Form G-325, Biographical Information, indicates that her father resides in New York City. Although there is some doubt raised by the record with regard to the presence of other family to support the applicant's mother-in-law, the evidence is minimally sufficient to establish that the applicant's spouse is providing necessary assistance to her mother during her chemotherapy

treatment for breast cancer. As such, the evidence of record establishes that it would be an extreme hardship for the applicant's spouse to relocate to Jamaica at this time.

An applicant must also establish extreme hardship to a qualifying relative if he or she remains in the United States. In this case, counsel asserts that it would constitute an extreme financial hardship to the applicant's spouse if the applicant were excluded. Counsel states that the applicant provides 50 percent of the family's income and that in his absence the family may struggle with only one income, noting that the applicant's child is enrolled in private school and his mother-in-law is facing a possible terminal illness and that the applicant may require financial support to relocate and readjust to life in Jamaica. The record contains employment verification letters for the applicant and his spouse, as well as tax documentation, but does not contain a breakdown of household financial obligations. Neither does the record document what amount of income the applicant makes and is contributing to the household. Finally, while counsel suggests that the applicant would earn only the minimum wage of $40 per week in Jamaica, the record does not document that the applicant would be limited to minimum wage employment and, therefore, be unable to provide financial assistance to his family from outside the United States. Moreover, the record does not document that the applicant's process of readjustment to Jamaica would require his spouse to support him financially. Without supporting documentary evidence, the assertions of counsel will not satisfy the petitioner's burden of proof, as 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). As such, the level of impact on the applicant's spouse in the event of the applicant's exclusion cannot be accurately determined. The AAO also notes that, even in a light most favorable to the applicant, financial hardship alone is not sufficient to establish extreme hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994).

The applicant's spouse asserts that the applicant's removal will have a great psychological impact on her entire family. While the AAO acknowledges the emotional strain that can be caused by the exclusion of a family member, the record in this case does not indicate that the impact experienced by the applicant's spouse, child or mother-in-law will rise above that normally experienced by the relatives of excluded aliens. 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)).

The applicant's spouse further asserts that the applicant's removal will result in extreme hardship to the applicant's mother. The AAO would note that the record fails to articulate any impact on the applicant's mother if she were to relocate to Jamaica with the applicant, nor does the record establish any hardships on the applicant's mother if she were to remain in the United States. While it has been asserted that the applicant's mother has high blood pressure that will be exacerbated by the applicant's removal, there is no evidence in the record to support this assertion. *Id.* As such, the record does not establish that the applicant's mother will experience extreme hardship based on the applicant's removal.

The record is lightly documented, and fails to support the assertions made by counsel and the applicant's spouse. When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, it does not support a finding that the applicant's spouse, child or mother would face extreme hardship if the applicant were to be excluded and they remained in the United States.

The AAO recognizes that the applicant's spouse, child and mother will experience hardship as a result of the applicant's exclusion. However, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. In the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse, child or mother from that suffered by other individuals whose spouses, parents and children have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse, child or mother as required under section 212(h) of the Act. Having found the applicant 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(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.