U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H3

DEC 06 2006

FILE: [redacted] Office: KINGSTON, JAMAICA Date:

IN RE: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 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 Officer-in-Charge, Kingston, Jamaica, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of Officer-in-Charge*, dated August 25, 2005.

On appeal, counsel asserts that the evidence submitted demonstrates extreme hardship to the applicant's spouse. *Form I-290B*, dated September 20, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, medical records for the applicant's spouse and financial records for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States with a fraudulent Canadian document on March 20, 1992 at Buffalo, New York. The applicant was placed in removal proceedings and was granted voluntary departure on January 8, 1999. The voluntary departure expiration date was March 9, 1999, but the applicant remained in the United States until February 15, 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 15, 2005, the date he departed the United States. As a result of the prior misrepresentation and unlawful presence, the applicant is inadmissible to the United States.[1]

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 applicant is also inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for seeking admission within ten years of his departure while an order of removal was outstanding. In the event that he has an approved Form I-601, he will need to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

> (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(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act. These waivers are dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen spouse. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Jamaica or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Jamaica. In regard to family ties, the record indicates that the applicant's spouse's parents and sister are in the United States. In regard to medical issues, the applicant's spouse states that she has agoraphobia and that she has a phobia of flying. *Applicant's Spouse's Statement*, dated August 25, 2006. The record includes a letter from the applicant's spouse's psychologist which states that she suffers from agoraphobia, she is frequently housebound and functionally disabled. *Psychologist's Letter*, dated February 5, 1999. The AAO notes that the medical records which evidence agoraphobia are over seven years old. The record lacks current substantiating evidence that the applicant's spouse would be unable to fly to Jamaica due to medical reasons. The record includes a doctor's letter which states that the applicant's spouse is being treated for hypertension and she has a history of depression/anxiety. *Doctor's Letter*, dated May 27, 2005. There is no evidence that she would be unable to receive treatment for hypertension in Jamaica and there are no details provided of the recency or severity of her depression and whether reuniting with the applicant would alleviate this problem.

The applicant states that he works off and on as a casual laborer and makes just enough to buy food. *Applicant's Statement*, at 1, dated November 21, 2006. As discussed below, the applicant's spouse has numerous financial debts and she is unemployed. Therefore, the applicant's spouse will likely encounter financial hardship in Jamaica due to the inability to pay her debts. In regard to ties to Jamaica, the AAO notes that the applicant's spouse is originally from Jamaica and is therefore, familiar with the language and culture. There is no evidence that she experienced extreme hardship while residing there previously. The record is not clear as to her family ties to Jamaica or other ties to Jamaica. Although she may face difficulty due to her debts, the applicant has not shown that his spouse would suffer extreme hardship in the event that she relocates to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she remains in the United States. Counsel states that the applicant's spouse's husband helped finance her medical bills, she is no longer receiving certain medical care, her family believes she is having a mental relapse and she lost furnishings and personal belongings due to being evicted. *Brief in Support of Appeal*, at 1. The applicant's spouse states that she has had nervous breakdowns in the past, she is unemployed, she does not have health insurance and she depends on the applicant's financial and emotional support. *Applicant's Spouse's Statement*. The applicant's spouse's statement also details the emotional hardship she is facing without the applicant. *Id.* The record includes documentation of her landlord's lawsuit to obtain rent and of the applicant's spouse's significant outstanding debts and bills, one of which has been sent to a collection agency. Based on the entire record, the AAO finds that extreme hardship to the applicant's spouse in the event that she remains in the United States without the applicant has been established.

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 AAO notes that 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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.