

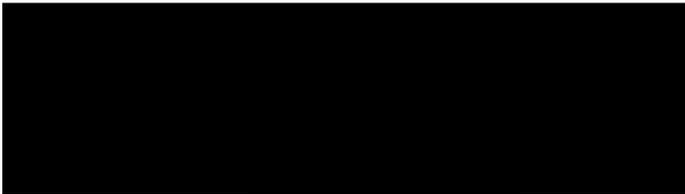
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

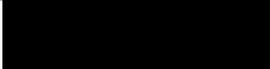


**U.S. Citizenship
and Immigration
Services**



H5

FILE:



Office: PHILADELPHIA

Date:

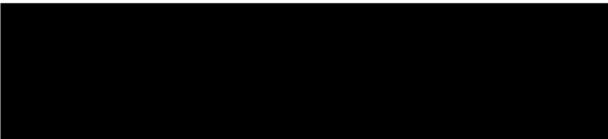
APR 12 2010

IN RE: Applicant:



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

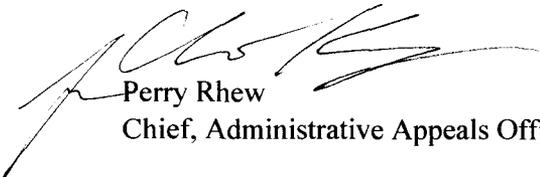
ON BEHALF OF APPLICANT:



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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director (“district director”), Philadelphia, Pennsylvania, 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 her U.S. citizen husband.

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 Acting District Director*, dated March 9, 2006.

On appeal, counsel for the applicant contends that the applicant’s relatives will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated May 1, 2006.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant’s mother, the applicant’s sister, the applicant’s husband, the applicant’s friend, the applicant’s neighbor, and a woman for whom the applicant provides care; medical documentation for the applicant’s mother, sister, and husband; articles on conditions in Jamaica; a copy of a birth record for the applicant; a copy of the applicant’s husband’s U.S. passport; documentation regarding the applicant’s and her husband’s employment and income; copies of a lease and bills for the applicant and her husband; tax documents for the applicant and her husband, and; documentation relating to the applicant’s attempted entry to the United States using a passport that belonged to another individual. The entire record was reviewed and considered in rendering this decision.

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

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, in pertinent part, 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 immigrant 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 shows that the applicant entered the United States on September 9, 1985 using a passport that belonged to another individual. Accordingly, she was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by fraud or willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

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 to a qualifying relative. 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).

On appeal, the applicant's mother states that she is elderly and paralyzed from the waist down, and that she has high blood pressure and diabetes. *Statement from the Applicant's Mother*, dated April 1, 2006. She explains that she relies on her other daughter, [REDACTED] "a bit much," and that [REDACTED] is very sickly and at times is unable to provide care. *Id.* at 1. She notes that she resides with [REDACTED] and that [REDACTED] provides for her. *Id.* The applicant's mother asserts that having the applicant in the United States would relieve some of the pressure from [REDACTED] make it easier for the applicant's mother, and "be a better life opportunity for [the applicant]." *Id.* She states that the applicant would make an impact by being there on weekends and when possible during the weekdays. *Id.* She provides that she needs help with tasks like buying necessities when [REDACTED] is working. *Id.* She indicates that the applicant helps ensure her medications are available, her clothes are clean, and her food is prepared. *Id.* The applicant's mother expresses that she is close with the applicant and that she would experience emotional hardship if the applicant is no longer present. *Id.*

The applicant provided a report from a physician, [REDACTED], regarding her mother's health. [REDACTED] states that the applicant's mother was cleared for knee replacement surgery in July 2000.

Report from [REDACTED], dated March 17, 2006. He explains that the applicant's mother has a history of diabetes and hypertension, and she takes medications. *Id.* at 1. He states that the applicant's mother's blood pressure has been somewhat difficult to control. *Id.* He provides that she has a mildly abnormal EKG with sinus tachycardia. *Id.* He notes that the applicant's mother has arthritis, and that she walks with a cane. *Id.*

The applicant's sister expresses that she is close with the applicant and that she needs her assistance due to her own health condition, the applicant's mother's health condition, and for the well-being of her children. *Statement from the Applicant's Sister*, dated April 1, 2006. She explains that she has a spinal condition, anxiety, and high blood pressure. *Id.* at 1. She indicates that she cares for her mother but it is difficult due to her own health problems. *Id.* She states that the applicant could help her with her three children, as she feels like she cannot give them enough of her time. *Id.* She notes that she works 12 hours per day, four days per week. *Id.*

The applicant provides a note from a physician, [REDACTED], regarding her sister's health. [REDACTED] states that the applicant's sister is under his care for low back pain for which she receives physical therapy, as well as hypertension, hypercholesterolemia, and anxiety for which she takes medication. *Note from [REDACTED]*, dated March 22, 2006.

The applicant's husband states that he cannot live without the applicant, and that she is loyal, dedicated, loving, and understanding. *Statement from the Applicant's Husband*, undated. He states that the applicant helps him financially, physically, and emotionally. *Id.* at 1. He provides that he is diabetic, and that the applicant helps ensure his nutritional needs are met. *Id.* He states that he does not know who will take care of him if the applicant resides outside the United States. *Id.* at 2.

The applicant submits documentation to show that her husband takes prescription medication, including Atorvastatin, Metformin, and Valsartan. *Applicant's Husband's Prescriptions*, dated 2004 and 2005.

The applicant provides a letter from a woman who asserts that the applicant has been working for her as a caregiver since 2004, and that she will experience hardship if the applicant cannot stay with her. *Letter from the Applicant's Employer*, dated March 16, 2006.

The applicant states that she experienced difficulty in Jamaica, and that she endured fear, anxiety, and depression. *Statement from the Applicant*, undated. She indicates that there is no freedom of political determination in Jamaica. *Id.* at 1. She states that she has experienced much better conditions in the United States, where she met her husband with whom she is close. *Id.* at 1-2. She indicates that her husband "is not in the best health" and that he needs her to take care of him. *Id.* at 2.

Counsel asserts that the applicant, the applicant's husband, the applicant's mother, the applicant's father, and the applicant's sister "have met the extreme hardship criteria for a Waiver of Inadmissibility." *Brief from Counsel* at 6. Counsel reiterates the information provided by the applicant, the applicant's husband, the applicant's sister, the applicant's mother, and the applicant's employer. *Id.* at 1-2. Counsel asserts that the applicant's lawful permanent resident father has been diagnosed with cancer, but that the applicant is unable to acquire his medical records. *Id.* at 3.

Counsel contends that most of the applicant's family members have debilitating injuries or sicknesses and they would receive little or no medical attention in Jamaica. *Id.* at 5. Counsel asserts that the rate of crime is high in Jamaica and that the Jamaican police are unable to control it. *Id.* Counsel provides that country conditions, crime, and cultural differences would make it difficult for the applicant and her husband to adjust to life in Jamaica. *Id.* Counsel cites statistics regarding Jamaica, including a 35 percent unemployment rate and a devalued currency. *Id.* at 5-6. Counsel asserts that the applicant and her husband would face difficulty finding employment in Jamaica, and that the applicant's husband would face challenges obtaining medical care. *Id.* at 6.

Counsel discusses positive and negative discretionary factors in the present case, and states that the factors in favor of the applicant outweigh those against her. *Id.* at 3-4.

Upon review, the applicant has not shown that a qualifying relative will experience extreme hardship should she reside outside the United States. It is first noted that the applicant's sister is not a qualifying relative whose hardship may serve as a basis for a waiver under section 212(i) of the Act.

Counsel asserts that the applicant's father is a lawful permanent resident of the United States. However, while the applicant identified her father on Form G-325A as [REDACTED] the applicant has not provided any supporting documentation to show by a preponderance of the evidence that [REDACTED] is her father. It is noted that the applicant's birth certificate does not have entries for the identity of and information about her father. *Applicant's Birth Record*, dated February 27, 2002. Nor has the applicant provided documentation to show that [REDACTED] is a lawful permanent resident. Accordingly, the applicant has not established that hardship to [REDACTED] may serve as a basis for a waiver under section 212(i) of the Act.

Further, the applicant has not provided sufficient explanation or evidence to show that [REDACTED] will suffer extreme hardship should she reside outside the United States. The applicant has not asserted that her father relies on her in the United States for emotional, physical, or economic support. While counsel states that [REDACTED] has been diagnosed with cancer, the applicant has not submitted any medical documentation to support this assertion, or indicated that [REDACTED] health condition will be affected by the applicant's absence. Counsel cites poor conditions in Jamaica. Yet, the applicant has not indicated her father's economic resources, connections in Jamaica, or other factors that may show the experience he would have should he return there. Based on the foregoing, the applicant has not established that [REDACTED] will experience extreme hardship should the present waiver application be denied.

Counsel asserts that the applicant's mother will endure extreme hardship should the applicant depart the United States. However, the applicant has not asserted or shown that her mother is a U.S. citizen or lawful permanent resident of the United States. For this reason, the applicant has not established that hardship to her mother may serve as a basis for a waiver under section 212(i) of the Act.

Additionally, the applicant has not shown that her mother will suffer extreme hardship should the present waiver application be denied. The applicant presents evidence to show that her mother suffers from health conditions. It is noted that, while the applicant's mother asserts that she is paralyzed from the waist down, the medical documentation in the record does not support this contention. [REDACTED] states that the applicant's mother was cleared for knee replacement surgery in

July 2000 and she walks with a cane, yet he makes no mention of prior or existing paralysis. The record does support that the applicant's mother has health problems for which she takes medication and receives medical care. However, the applicant has not provided sufficient explanation of her mother's symptoms to show the level of independence she has, or the degree of assistance she requires. The applicant's mother stated that she resides with the applicant's sister, and that the applicant's sister provides for her. She asserts that the applicant assists her when the applicant's sister is working, yet the applicant has not shown that her mother requires her care, or that her mother will suffer significant hardship due to her health should the applicant reside outside the United States.

The applicant's sister explains that she has a spinal condition, anxiety, and high blood pressure. It is noted that the medical documentation the applicant submitted for her sister reports that she suffers from "low back pain," and it does not diagnose her with a spinal condition, injury, or disease. The applicant's sister reported that she works 48 hours over a four day period each week, and she did not indicate that her health interferes with her ability to engage in employment or to perform common tasks. Thus, the record does not show that the applicant's mother will lack assistance in the applicant's absence due to the applicant's sister's health challenges.

The applicant's mother expresses that she is close with the applicant and that she does not wish to be separated from her. The AAO acknowledges that the separation of family members often creates significant emotional hardship. However, the applicant has not distinguished her mother's psychological challenges from those commonly expected when an individual's daughter relocates abroad due to inadmissibility.

Federal court and administrative 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 applicant has not asserted that her mother will endure other elements of hardship should the applicant reside outside the United States. All elements of hardship to the applicant's mother, should she remain in the United States without the applicant, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her mother will experience extreme hardship should she remain in the United States and the applicant depart.

Counsel cites conditions in Jamaica including poor economic conditions and a 35 percent unemployment rate. However, the applicant has not submitted any documentation to support counsel contentions, or to show the economic circumstances the applicant's mother would face there. It is noted that the U.S. Central Intelligence Agency reported that the unemployment rate in Jamaica was estimated to be 14.5 percent in 2009. *U.S. Central Intelligence Agency, World*

Factbook: Jamaica, dated March 18, 2010. While this rate is high, it is significantly lower than the 35 percent rate cited by counsel, and calls into question counsel's unsupported assertions.

The applicant provides articles regarding instances of crime in Jamaica, and counsel states that escalating crime poses a threat to the applicant's family members. However, the applicant has not explained where her mother would reside in Jamaica, or what would be her economic or housing circumstances. It is noted that the articles primarily describe gang-related violence targeted at other gang members, and one article reports that the government of Jamaica is giving law enforcement more tools and stations to combat crime. *Articles from the [REDACTED]*, dated January 24, February 5 and 14, and December 19, 2005. The applicant has not shown that her mother would be targeted for crime, or that she would face an unusual risk of harm in Jamaica.

The applicant's mother has health care needs and mobility challenges, including diabetes, hypertension, arthritis, difficulty controlling her blood pressure, and the need to walk with a cane. It is evident that these challenges would create hardship for the applicant's mother should she relocate to Jamaica. However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As the applicant has not established that her mother will encounter extreme hardship should she remain in the United States, the applicant has not shown that denial of the present waiver application "will result in extreme hardship" to her mother, as required for a waiver under section 212(i) of the Act.

The applicant has not shown that her husband will suffer extreme hardship should he remain in the United States without her. The applicant's husband reports that the applicant assists him with his health needs. However, the applicant has not established that her husband suffers from conditions that require her care. The applicant's husband indicates that he has diabetes, yet the applicant has not provided sufficient medical documentation to show the severity of her husband's condition or his medical needs. The applicant provides evidence that her husband takes prescription medication, yet without related explanation from a medical professional, the AAO is unable to conclude that he suffers from serious health problems that he cannot address without the applicant's presence.

The applicant's husband expresses that he is close with the applicant and that he will endure emotional hardship should he be separated from her. Yet, while the AAO acknowledges that the applicant's husband will suffer psychological difficulty if he is separated from the applicant, the applicant has not sufficiently distinguished his hardship from that which is commonly expected when spouses reside apart due to a prior violation of immigration law.

The applicant's husband states that the applicant assists him financially. However, the applicant has not provided explanation or evidence to show that her husband will endure significant economic hardship in her absence. The applicant presented evidence that her husband earned a gross income of \$12,743 in 2003 and \$22,814 in 2002. *Tax Records for the Applicant's Husband*. However, the Form I-290B appeal was dated April 15, 2006, and the applicant has not provided any documentation

to show her husband's income in 2004 or 2005, or as of the date of filing the appeal. The applicant submitted a lease and bills for charges in 2004, yet the applicant has not supplemented the record to show her husband's financial obligations as of the date of filing the appeal. It is noted that the 2004 charges reflect that the applicant and her husband incurred utilities and rent charges of approximately \$930, and the applicant has not shown that her husband is unable to earn sufficient income to meet his needs without her contribution.

All stated elements of hardship to the applicant's husband, should he remain in the United States without her, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should he remain in the United States and she depart.

The AAO recognizes that the applicant's husband would face difficulty should he relocate to Jamaica, including the need to find new employment, separation from the country of his birth and his present community, separation from the medical professionals who provide his care, and more challenging conditions in Jamaica. However, the applicant has not distinguished her husband's hardship in Jamaica from that which is commonly experienced when an individual resides abroad due to the inadmissibility of a spouse, or shown by a preponderance of the evidence that her husband's challenges would rise to the level of extreme hardship.

All elements of hardship to the applicant's relatives have been considered in aggregate. Based on the foregoing, the applicant has not shown that denial of the present waiver application "will result in extreme hardship" to a qualifying relative, as required for a waiver under section 212(i) of the Act. 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 regarding a 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.