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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2



FILE: [Redacted]

Office: KINGSTON, JAMAICA

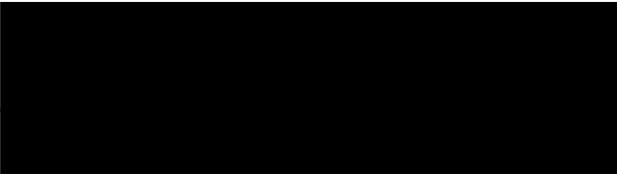
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IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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.

For 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Kingston, Jamaica. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Jamaica. The applicant was found inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a benefit under the Act through fraud or misrepresentation. The record reflects that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel indicates on the Form I-290B that he requires 45 days in which to submit a brief and/or additional evidence to the AAO. As of this date, however, the AAO has not received any additional materials; hence, the record is complete. Counsel contends that the applicant did not misrepresent facts relating to his prior marriage to a U.S. citizen in order to procure a benefit under the Act, but counsel fails to provide any evidence supporting this claim. Counsel also asserts that the applicant's wife is suffering extreme hardship on account of the separation from the applicant. The AAO has reviewed the entire record and concurs with the officer in charge's determination in this matter.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The officer in charge based the finding of inadmissibility under this section on the applicant's fraudulent marriage to a U.S. citizen. The latter admitted the fraud and withdrew her petition for an alien relative. Counsel contests the finding of inadmissibility, but submits no evidence to overcome the officer in charge's determination.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien himself is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 pursuant to § 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. The BIA has held:

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).

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).

The record in the instant case indicates that the applicant’s wife is originally from Jamaica, and she currently works as a certified nursing assistant. The record contains a letter written on September 15, 2003 by Thomas J. Paolino, Jr., M.D., who states that the applicant’s wife is under treatment for depression which has no determined precipitant. Dr. Paolino indicates that the applicant’s wife would not be able to obtain suitable medical treatment in Jamaica, and he believes her condition would worsen in that country. The record does not establish that the applicant’s wife’s condition was caused by or worsened by the applicant’s inadmissibility, and there is no independent evidence that she would be unable to receive treatment in Jamaica. Moreover, the record does not establish that the applicant’s wife is unable to care for herself or carry out her usual daily activities, despite her depression.

Counsel also asserts that the applicant’s wife cares for her granddaughter; therefore, if she decides to return to Jamaica to accompany the applicant, she will have to take her granddaughter with her, which will cause her additional hardship. The record contains a letter from the principal of her granddaughter’s school, who writes that the applicant’s wife provides a great level of support to her granddaughter’s academic development. Nevertheless, the focus of this analysis is on the hardship experienced by the applicant’s wife, not that of her granddaughter. The record does not establish that separation from her granddaughter or the added burden of taking her to Jamaica would cause the applicant’s wife 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 parents or spouse face extreme hardship if the applicant is refused admission. Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under

limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

U.S. 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 AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.