U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MIAMI, FL Date: OCT 2 4 2005

IN RE: [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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the acting district director and the AAO will be affirmed.

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 seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The acting 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated October 28, 2002. The AAO also concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the appeal. *Decision of the AAO,* dated July 2, 2003.

On motion, counsel asserts that the applicant's prior counsel did not support a brief in support of the appeal, the AAO denied the waiver citing the absence of a brief and evidence and the applicant is eligible for a waiver under section 212(i) of the Act. *Motion to Reopen*, dated July 29, 2003.

In support of these assertions, counsel submits the aforementioned motion, affidavits, a warranty deed, college fee statement for the applicant's daughter, paychecks for the applicant, photos, support letters and numerous other bills. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States on February 27, 1992 by falsely claiming to be a U.S. citizen. As a result, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act

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 AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Children are not qualifying family members under section 212(i) of the Act and their hardship is only relevant to the degree it causes hardship to the qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 pursuant to section 212(i) of the Act. 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.

In regard to family ties to the United States, the record indicates that the applicant's spouse has a U.S. citizen daughter and a lawful permanent resident son. *Affidavit of Applicant's Spouse*, at 1, undated. The record does not mention if the applicant's spouse has any family ties or other ties outside of the United States. However, the applicant's spouse was born in Jamaica and there is no indication as to why she could not return there.

Counsel asserts that Jamaica is an extremely poor country with an extremely high rate of unemployment. *Motion to Reopen*, at 12. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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).

In regard to the financial impact of departure, counsel asserts that the applicant has always been the main wage-earner and it is impossible for the applicant's spouse to support her children without the applicant's financial assistance. *Motion to Reopen*, at 9. The applicant states that he would be unable to support his family from Jamaica, as the jobs are very low paying. *Applicant's* Statement, at 2, undated. The AAO acknowledges the expenses of the applicant and his spouse, however, it is not clear from the documents submitted that the applicant's spouse would be unable to pay the relevant bills by herself using her income, or with the assistance of her adult children and any foreign income from the applicant.

There is no mention of any significant conditions of health for the applicant's spouse, particularly when tied to an unavailability of suitable medical care in Jamaica.

Therefore, based on the totality of the record, extreme hardship has not been shown in the event that the applicant's spouse relocates to Jamaica or in the event that she remains in the United States with access to employment.

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.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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. 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. Therefore, counsel's assertions and evidence in support of a favorable exercise of discretion will not be addressed.

In proceedings for application for waiver of grounds of inadmissibility under section 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.