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U.S. Citizenship
and Immigration
Services

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FILE:

Office: INDIANAPOLIS, IN

Date:

DEC 02 2008

IN RE: Applicant:

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:

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Indianapolis, Indiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Jamaica, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought 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 with his U.S. citizen spouse and stepchild and his lawful permanent resident mother.

The district director concluded that that the applicant had 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 District Director*, dated August 7, 2006.

On appeal, counsel for the applicant submits a brief, dated September 6, 2006 and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

[A]ny 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 . . . is inadmissible.

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

The Attorney General [now Secretary, Homeland Security, (Secretary)] 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 (Secretary) 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

Regarding the applicant's ground of inadmissibility, the record reflects the commission of a crime involving moral turpitude. In March 2006, the applicant pled guilty to the offense of Fraud on Financial Institutions, in violation of section 35-43-5-8 of the Indiana Criminal Code, based on a September 2004 incident. The applicant's sentence was suspended and he was placed on probation for one year. As the aforementioned crime was committed after the applicant's eighteenth birthday and the maximum penalty for this type of crime is eight years imprisonment, the district director correctly found the applicant inadmissible under section

212(a)(2)(A)(i)(I) of the Act. The applicant is eligible to apply for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant and/or his extended relatives experience upon removal is irrelevant to section 212(h) waiver proceedings; the relevant hardships in the present case are the hardships suffered by the applicant's U.S. citizen spouse and stepchild and his lawful permanent resident mother.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

The applicant's lawful permanent resident mother asserts that she will suffer extreme hardship if the applicant were removed. As she states,

Coming to the United States wasn't a choice. It was a decision that needed to be made to escape the threat, robbery extortion my family and I face living in Jamaica. We lived in constant fear of our intimidators returning each day and night. I felt force and compelled to leave my children; especially my youngest son [redacted] [the applicant] who was only eleven when I migrated.... By the help of God, I was able to have [redacted] join me here in the United States.... My heart felt complete.

Hypertension is another name for high blood pressure.... I was diagnosed with hypertension a few years ago and as I grew older, my condition seems to be worsened. I am unable to seek the medical attention that I need because stress I am under. I was force to cancel my insurance because I was no longer able to afford it. My condition seems to be deteriorating thinking of the possibility of my son leaving me.

I suffer from chronic stress which is the ongoing of psychological problems. I am at high risk of obtaining heart disease because stress increase pumping action of the heart, increasing the likelihood of a blood clot....

One of my biggest fears of [REDACTED] being sent to Jamaica to live is the fear of him getting killed and losing his life violently at such a young age. The feeling of losing another son in such violence is dreadful and terrifying. The pain I would encounter would be extreme and unbearable....

Gregory legal problems have created a strain on me and the family both mentally and financially.... Because of the high unemployment rate and his lack of a qualified degree as he is still in college would hinder him from obtaining a decent job. With not enough income to support myself, I would feel compelled to support my son....

Letter from [REDACTED], dated July 3, 2006.

No documentation has been provided from the applicant's mother's treating physician outlining her medical condition, the gravity of her situation, the short and long-term treatment plan, what specific assistance she needs from the applicant, and what hardships she would face were the applicant physically absent from her life. Moreover, no financial documentation relating to the applicant's mother, including income, expenses, assets and liabilities, has been provided, to establish that due to the applicant's relocation abroad, his mother will suffer extreme financial hardship. In addition, counsel indicates that the applicant's three siblings and father reside in the United States; it has not been established that they would be unable to assist the applicant's mother, financially, physically and/or emotionally, should the need arise.

Finally, it has not been established that the applicant's mother would be unable to travel to Jamaica, or any other country to which the applicant chooses to live, on a regular basis to visit the applicant. Although the AAO recognizes that Jamaica has been impacted by crime, the U.S. Department of State has not issued any type of warning against travel to the Jamaica; as such, it has not been established that the applicant and/or his mother, natives of Jamaica, will be subject to crime and/or violence were they to return to their home country.¹ 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)). Thus, the AAO concludes that it has not been established that the applicant's lawful permanent resident mother will suffer extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

The applicant further discusses the hardships his U.S. citizen spouse and stepchild will suffer were he removed from the United States. As asserted by the applicant's spouse,

¹ As noted above, the applicant's mother references that she lost a son to violence, presumably in Jamaica. No documentation has been provided by counsel regarding this event, to further support the applicant's mother's statements that she will suffer extreme hardship if her son returns to Jamaica. Nor has the applicant and/or his sibling, Alecia Johnson, specifically mentioned their brother's death due to violence in Jamaica in their statements. As such, the AAO is unable to take into account this event when analyzing extreme hardship with respect to a relocation to Jamaica.

The emotional hardship that [REDACTED] [the applicant's spouse] will endure if this waiver application is denied will be nothing short of devastating. Since 2004, [REDACTED] has been going through a lot psychologically.... Lately she has been suffering from severe psychological problems caused by stress. She have [sic] been thinking so much about the thought of being separated from her husband is psychologically and emotionally traumatizing to her.... Because of this [REDACTED] is currently unable to start school and unable to focus on the general everyday activities [sic].... [REDACTED] feels suicidal at times and wants to go see a psychologist, but because of all their bills and debt they are unable to seek professional help. [REDACTED] husband [REDACTED] [the applicant] is the only one who keeps her going everyday and encourages her to hold on...

Because [REDACTED] is under severe stress about losing her husband, she will be at more risk of diseases and the body's ability to fight off those diseases.

[REDACTED] also has been suffering from aviophobia, also known as fear of flying....Traveling back and forth [sic] to Jamaica would cause a severe problem in the future for her health....

[REDACTED]'s financial status has been impacted severely by this hardship. If she is forced to live without her husband it would be impossible for her to continue to support herself.... [REDACTED] just recently lost her job and would end up being homeless if it wasn't for her husband's support from his business....

Letter from S [REDACTED], dated June 30, 2006.

Although the applicant's spouse references the extreme emotional hardship she will suffer if the applicant is removed from the United States, and notes the fact that she is suffering from numerous mental health conditions, including aviophobia and suicidal ideations, no documentation has been provided by a licensed mental health professional to establish the applicant's spouse's current mental health situation, its gravity, its short and long-term treatment plan, and what, if any, specific impact the applicant's removal would have on his spouse, and by extension, his stepchild.

As for the financial hardship referenced by the applicant's spouse, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not

considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant's and his family's financial situation, including income and expenses, assets and liabilities. The applicant has thus failed to show that his absence will cause extreme financial hardship to the applicant's spouse and stepchild. The applicant's spouse references her financial dependence on the applicant but has not established what kind of income the applicant brings to the household, nor has she documented that she is unable to obtain gainful employment to support herself and her child. In addition, the applicant does not establish that were he removed, he would be unable to obtain employment abroad and assist in supporting his spouse. Moreover, it has not been established that the applicant's stepchild's father and/or the applicant's siblings and/or parents would be unable to assist the applicant's spouse and stepchild financially and emotionally should the need arise. Finally, it has not been established that the applicant's spouse and stepchild would be unable to travel to Jamaica, or any other country to which he relocates, on a regular basis. As previously stated, assertions without supporting documentary evidence does not suffice to establish extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or 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, in common parlance, 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 familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. The AAO thus concludes that while the applicant's spouse, stepchild and mother may need to make alternate arrangements with respect to their emotional, physical and financial care were the applicant to relocate abroad due to his inadmissibility, it has not been established that such alternate arrangements would cause them extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. In this case, counsel for the applicant has not addressed and/or provided any documentation to establish that the applicant's lawful permanent resident mother would suffer extreme hardship were she to relocate abroad due to the applicant's inadmissibility. As for the hardships the applicant's spouse and stepchild would face were they to relocate to Jamaica, the applicant's spouse states the following:

██████████ [the applicant's spouse's] daughter biological father would undoubtedly deny ██████████ the right to take their daughter out of the country.... The thought of being absent from her only child will cause Mrs.

extreme hardship. For a mother to leave and abandon her daughter to move to a foreign country and the impact it would have on them both is just traumatizing....

Crime, including violent crime, is a serious problem in Jamaica... Crime is exacerbated by the fact that police are understaffed and ineffective. These conditions would make her petrified to live there especially with her four year old daughter.

Jamaica has one of the highest murder rates in the world....

Each year thousands of women and girls in Jamaica are sexually assaulted.... With the events of sexual predators on the loose, and four year old daughter in which they are both at risk of being rapped [sic].

The CIA world fact book states that Jamaica is a major transshipment point for cocaine.... Marijuana is very common....

With poor medical facilities though out Jamaica along with high cost of medical attention, and with no insurance would be in a state of emergency....

[H]ospitals in Jamaica suffer from a shortage of medical doctors, often leading to poor care and lack of proper medical treatment.... [Q]uality of life would drastically decline....

and her daughter, whom are both United States citizens, will have no health insurance in Jamaica.

Jamaica has a very high breast cancer mortality rate compared to the US.... Stress can increase a woman's chance of developing breast cancer.... This will no doubt increase chances of obtaining breast cancer....

Jamaica has a very high rate of tuberculosis.... and her daughter would be easy targets for contracting TB....

Moving to Jamaica with no employment, savings and no money whatsoever will leave and her four year old daughter in a terrible condition. If Mrs. leave and move to Jamaica her credit would also be completely ruin, not only would she be unable to afford to pay her debts with the Jamaican income, there would be nothing left for basic survival needs. would also have a very difficult time finding a job. The cost of daycare for her daughter will

also be very high, for when she and her husband is at work or school.... In Jamaica they would not have any relative to watch their daughter for them....

Both N [REDACTED] do not have any relative to stay with on the island. [REDACTED] would then have to stay with strangers and share a small apartment were [sic] there would be as much as five people living in one apartment. Most are only allowed to use water twice a week, which would negatively affect Mrs. health. This would be a very severe change in her standard of living....

[REDACTED] is currently living in the same community she was born and raised in. She have been it [sic] the community for over 19 years. Over these years she has developed very strong ties with the community....

Jamaica is economically depressed, has poor health care (by U.S. standards) and cannot provide [REDACTED] with the educational opportunities necessary for her to continue to pursue her career path. Furthermore, she would be unavailable to family. Most of all, by moving to Jamaica N [REDACTED] would set into emotional, social, and medical forces that could prove life threatening to her....

Id. at 2-7, 10.

The AAO notes that the U.S. Department of State references the following problematic country conditions in Jamaica:

Crime, including violent crime, is a serious problem in Jamaica, particularly in Kingston. While the vast majority of crimes occur in impoverished areas, the violence is not confined. The primary criminal concern of a tourist is being a victim of theft. In several cases, armed robberies of Americans have turned violent when the victims resisted handing over valuables. Crime is exacerbated by the fact that police are understaffed and ineffective.

Drug use is prevalent in some tourist areas. American citizens should avoid buying, selling, holding, or taking illegal drugs under any circumstances. There is anecdotal evidence that the use of so-called date rape drugs, such as Rohypnol, has become more common at clubs and private parties. Marijuana, cocaine, heroin and other illegal narcotics are especially potent in Jamaica, and their use may lead to severe or even disastrous health consequences.

Medical care is more limited than in the United States. Comprehensive emergency medical services are located only in Kingston and Montego Bay, and smaller public hospitals are located in each parish. Emergency medical and ambulance services, and the availability of prescription drugs, are limited in

outlying parishes. Ambulance service is limited both in the quality of emergency care and in the availability of vehicles in remote parts of the country. Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost thousands of dollars or more. Doctors and hospitals in Jamaica often require cash payment prior to providing services.

Country Specific Information-Jamaica, U.S. Department of State, dated June 2, 2008.

Based on the problematic country conditions in Jamaica as noted by the U.S. Department of State, the need for the applicant's stepchild to reside near her biological father and mother to ensure continued stability, financial hardship, long-term ties to the community, and unfamiliarity with the country and its customs, it has been established that the applicant's U.S. citizen spouse and stepchild would suffer extreme hardship were they to relocate to Jamaica due to the applicant's inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and/or stepchild and/or lawful permanent resident mother would suffer extreme hardship if he were removed from the United States. Although the applicant has established that his U.S. citizen spouse and child would suffer extreme hardship were they to relocate to Jamaica, it has not been established that they would suffer extreme hardship were they to remain in the United States while the applicant relocated abroad. As for the applicant's lawful permanent resident mother, it has not been established that she would suffer extreme hardship were she to remain in the United States and in the alternative, were she to relocate to Jamaica, her home country. The record demonstrates that the applicant's qualifying relatives face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son/spouse/stepfather is refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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. The waiver application is denied.