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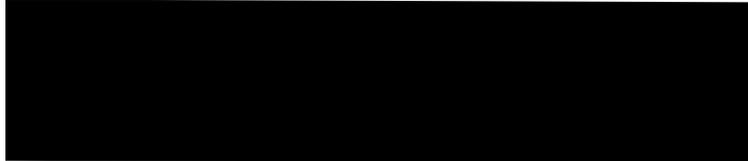
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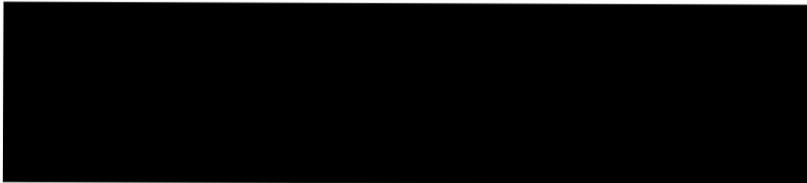
JUN 23 2008

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, 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 having procured admission into the United States by fraud or willful misrepresentation on October 14, 1990. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director concluded that the applicant submitted no evidence concerning his spouse suffering hardship above and beyond normal emotional distress. He also noted that evidence was submitted regarding the applicant's U.S. citizen child suffering hardship as a result of the applicant's inadmissibility, but that hardship to the applicant's son is not considered in section 212(i) waiver proceedings. The application was denied accordingly. *Decision of the Acting District Director*, dated November 21, 2005.

On appeal, counsel asserts that the acting district director erred in denying the applicant's waiver application because he failed to consider the nature and extent of the hardship the applicant's spouse would suffer as a result of the applicant's removal to Jamaica. *Form I-290B*, dated December 13, 2005. Counsel states that the applicant's spouse would suffer, "great actual or prospective injury," amounting to extreme hardship, because life-threatening injury is highly probable considering the volatile, criminal and murderous propensities of Jamaican society. *Id.* Counsel submits additional evidence to establish that the applicant's spouse would suffer extreme hardship if she is forced to relocate to Jamaica or visit Jamaica for extended periods of time. *Id.*

The record indicates that on October 14, 1990, the applicant entered the United States as an agricultural worker under the name, "Christopher Facey." Accordingly, the applicant is inadmissible to the United States 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or his children would experience due to separation is not considered in section 212(i) waiver proceedings unless it would cause hardship to the applicant's spouse and/or parent.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 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.

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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Jamaica and in the event that she resides in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

On appeal counsel asserts that the applicant's spouse will suffer extreme hardship as a result of having to relocate to Jamaica to be with the applicant or as a result of having to make extended visits to Jamaica to preserve her relationship with the applicant. *Counsel's Brief*, dated December 13, 2005. The applicant's spouse states that moving her family to Jamaica will impose extreme hardship to her family. *Spouse's Statement*, dated June 24, 2003. She states that Jamaican schools lack many of the essentials needed to operate on a daily basis, Jamaican hospitals lack medicines and equipment, employment opportunities are lacking, crime is out of control and fire departments and staffs are limited. *Id.*

Counsel states that it is essential for the AAO to assess Jamaica's unstable and life-threatening country conditions in reviewing the applicant's waiver application. *Counsel's Brief*, dated December 13, 2005. In support of these assertions counsel submits 13 articles from the *Jamaican Observer*, reporting on crime and violence in Jamaica. *Id.* The articles indicate that Jamaica suffers from serious problems regarding crime and

violence. One article states that the Jamaica is on a course to reach an all-time high in the number of murders in one year. "Fifteen Murders to New Record," dated November 20, 2005. Another article states that Jamaicans rate crime and violence, along with unemployment, as one of the most pressing problems facing their communities. "Crime, Joblessness Remain Dominant Concerns," dated December 1, 2005. Three articles report on specific murders that occurred in St. Andrews and in inner-city Kingston neighborhoods. "Boy, 13, Among Four Charged with Abduction, Rape and Murder," dated November 17, 2005; "Three Mid-Morning Murders as Jones Town Violence Flares," dated November 19, 2005; "Violence Shuts Down Two Kingston Schools," dated October 1, 2005. Some of the articles indicate that the crime rate is affecting the Jamaican economy. One article states that the British Foreign Office issued a travel advisory warning its citizens about the violent crime in Jamaica and stating that the estimated 1,400 murders in Jamaica so far this year make it statistically more dangerous than Mosul or Basra in Iraq. "Brits Warned of J'ca Crime," dated October 26, 2005. Another article states that criminal violence will cost Jamaica fifteen billion in the cost of health care and lost economic activity. "Violence Costing Country \$15B," dated October 13, 2005. Finally, another article reports that the burden of escalating crime and the general erosion of the rule of law is hurting Jamaican businesses. "Crime Costly to Business," dated June 5, 2005. Counsel also submitted a State Department Consular Information Sheet for Jamaica, dated September 26, 2002. The consular information sheet states that gang violence and shootings occur regularly in inner-city areas of Kingston. The sheet also states that violent crime is a serious problem in Jamaica, particularly in Kingston and that medical care is more limited than in the United States.

In regard to the applicant's spouse suffering extreme hardship as a result of being separated from the applicant, counsel states that separation would cause the applicant's spouse to have to travel to Jamaica for extended visits and that these visits would result in extreme hardship to the spouse for the same reasons that relocation would cause extreme hardship. *Counsel's Brief*, dated December 13, 2005. The applicant's spouse states that traveling back and forth to Jamaica would not only create a great expense for her family, but is also a heart-wrenching thought because of the violence and economic conditions. *Spouse's Statement*, dated June 24, 2003. She further indicates that because of the financial strain placed on her as a single parent, she and her children may not be able to visit the applicant or telephone him frequently. *Id.*

The AAO notes that at the time of filing the applicant's waiver application, counsel asserted that the applicant's son would suffer extreme hardship as a result of being separated from his father. In support of this assertion counsel submitted a letter from the son's teacher and a statement from the applicant's spouse. However, as stated above, hardship to an applicant's children is not considered in section 212(i) waiver proceedings unless it is shown how the children's hardship would cause hardship to the qualifying relative, in this case the applicant's spouse. The record does not make this connection, so the evidence regarding the applicant's son will not be considered.

The AAO notes that although the documentation submitted does establish that parts of Jamaica, in particular those areas in and around Kingston, are extremely dangerous, it does not show that the applicant's spouse would be living and/or visiting areas where she would be in harms way. The record indicates that the applicant's last residence in Jamaica was St. Mary's, located in the Northeast region of Jamaica and not in close proximity to Kingston or other reported problem areas. Furthermore, the AAO recognizes that Jamaica also suffers from economic problems, but the record does not indicate that the applicant's spouse, an experienced bank teller, could not find employment in a safe area in Jamaica, that her children could not be

enrolled in a school in Jamaica or that she would be unable to receive proper medical care for any medical needs. Thus, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship if she were to relocate to Jamaica.

The AAO notes the applicant's spouse's claims that she would experience financial hardship if separated from the applicant. However, financial hardship, alone, is not sufficient to establish extreme hardship. 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) ("lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("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"); *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). Accordingly, the record also fails to demonstrate that the applicant's spouse would suffer extreme hardship if she remained in the United States following the applicant's removal.

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.

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 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.