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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE DISTRICT OFFICE Date:

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a citizen of Jamaica, was found 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 is the spouse of a United States citizen and 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 husband.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant is required to return to Jamaica. The entire record was reviewed and considered in rendering a decision on the appeal.

The District Director found that the applicant entered the United States in March 1996, fraudulently, by using the passport of another individual. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute her inadmissibility; rather, she is filing for a waiver of her inadmissibility.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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.

A section 212(i) waiver of the bar to admission resulting from a 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 or her son would experience upon denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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 applicant is required to demonstrate that her husband would face extreme hardship in the event the waiver application is denied, regardless of whether he joins her in Jamaica or remains in Maryland without her.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. 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.

Counsel submitted the Form I-290B, Notice of Appeal, on February 17, 2007. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within thirty days.

However, the AAO did not receive this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to counsel on March 7, 2008, requesting that the brief and/or additional evidence be sent within five business days. Counsel did not respond to the AAO's fax. Thus, the AAO deems the record complete and ready for adjudication.

The record establishes that the applicant's husband is a forty-year-old citizen of the United States. He and the applicant have been married since September 29, 2000 and have a six-year-old son together, who is also a citizen of the United States.

The District Director issued a Notice of Derogatory Information (NOD) in connection with the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, on June 2, 2005. In his NOD, the District Director notified the applicant of her inadmissibility and that in order to overcome such inadmissibility, the Form I-601 would need to be filed.

The applicant filed the instant Form I-601 on July 5, 2005. The applicant submitted a copy of her marriage certificate; a copy of her son's birth certificate; information from the applicant's checking account; and a brief cover letter (which did not mention hardship). She submitted no evidence, and made no assertion, that denial of the application would result in extreme hardship to her husband, the qualifying relative. In his January 20, 2006 denial of the Form I-601, the District Director noted that the applicant "failed to submit any evidence to establish the extreme hardship that would result if you were refused admission into the United States."

On appeal, counsel states that the applicant was not represented by counsel when she filed the Form I-601, and that she was not aware of the importance of legal representation. Therefore, counsel asserts, the applicant's right to counsel and due process of law were violated by CIS. Counsel also states that the District Director "did not adequately explain or give any specific evidence of how the particular circumstances of the applicant and her U.S. citizen husband's situation affected her decision. . ."

The AAO disagrees with counsel's assertions. The applicant elected to file the waiver application without legal representation. Had she desired to file with the aid of counsel, she could have done so. Similarly, counsel's assertion that the District Director's adjudication of the application constituted a due process violation fails. Counsel has demonstrated no error by the District Director in conducting his review of the application, nor any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). The applicant did not meet her burden of proof, and the denial was the proper result under the regulation. Finally, the AAO finds no merit in counsel's assertion that the District Director did not adequately explain, or give specific evidence as to how, the applicant's circumstances affected the his decision. Again, the applicant submitted no evidence to demonstrate, nor did she even assert, that denial of the application would result in her husband experiencing extreme hardship. There was no evidence for the District Director to analyze. The District Director's decision was the proper result of the evidence before him at the time he adjudicated the application.

As noted previously, counsel elected not to respond to the AAO's March 7, 2008 facsimile. As such, the record still contains no information regarding any hardship that the applicant's husband would face if the applicant were to depart the United States. There is nothing for the AAO to analyze.

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 husband will face extreme hardship if the applicant returns to Jamaica without him. The record does not establish that he faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a fiancée is refused entry into the United States. No evidence was submitted or claims made to establish that he would experience financial, medical, or emotional hardship that would rise to the level of "extreme" as contemplated by statute and case law. Nor has the applicant established that her husband would face extreme hardship if he joined her in Jamaica: again, no evidence was submitted or claims made to demonstrate that he would face hardship beyond that normally faced by others in his situation. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. Moreover, the AAO notes that the applicant's husband is a former national of Jamaica, which would presumably diminish the cultural readjustment he would be required to make relative to others in his situation.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation 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. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility of a spouse. 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(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.