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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK

Date: NOV 07 2008

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 PETITIONER:

[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.

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 District Director, New York City, 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 attempted to enter the United States at New York with a photo-switched British passport in October 1990 and was denied admission. On October 27, 1990 she was admitted to the United States at Newark, New Jersey after presenting a photo-switched Jamaican passport and U.S. visa and has remained in the United States since that date. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought and later procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant has a Lawful Permanent Resident husband and mother and is the beneficiary of an approved Petition for Alien Relative. She 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 and mother.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated June 28, 2005.

On appeal, counsel asserts that the applicant's husband has established that he would suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant's husband has a medical condition for which he needs care and that affects his ability to work. *See Notice of Appeal to the AAO (Form I-290B)*. Counsel further states that the applicant assists her husband with his basic daily needs, including financial needs. Counsel requested 30 days in order to submit a brief and/or additional evidence in support of the appeal. As of this date, over three years later, no additional statement or evidence has been submitted. In support of the waiver application, counsel submitted letters from the applicant and her husband, a letter from the applicant's mother, copies of prescriptions, and a copy of an appointment notice for physical therapy for the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, 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 record reflects that the applicant is a thirty-eight year-old native and citizen of Jamaica who has resided in the United States since 1990, when she entered the country with a fraudulent Jamaican passport and U.S. visa. The applicant's husband is a forty-two year-old native and citizen of Jamaica and Lawful Permanent Resident whom the applicant married on December 19, 1997. The applicant and her husband reside in Jersey City, New Jersey. The applicant's mother is a native and citizen of Jamaica and Lawful Permanent Resident who resides in Miami, Florida.

Counsel asserts that the applicant's husband has a medical condition that "inhibits his ability to care for himself as well as his ability to work." *See Notice of Appeal to the AAO (Form I-290B)*. In support of this assertion counsel submitted copies of prescriptions dated September 8, 2005. It is unclear what the handwritten prescriptions are for and what condition the applicant's husband suffers from, but they appear to prescribe "Vit B6 50 mg" and "wrist splint #2." A copy of an appointment card for a physical therapist is also included, but no other information was provided concerning the medical condition, such as a letter in plain language from the physician describing the exact nature of the condition, any treatment or assistance from family members needed, or the prognosis for recovery. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Counsel asserts that the applicant's husband needs the applicant to assist with his basic daily needs and provide financial assistance because his ability to work is inhibited, but without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The

unsupported 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).

The applicant's husband states in his letter that to deny the applicant admission would bring him pain and great hardship. He further states: "It will affect my stability and greatly hamper me financially." See letter from [REDACTED] dated December 4, 2003. He additionally states: "To take all these wonderful qualities from my life will shut me down totally and leave me helpless." The AAO notes that no documentation of the applicant's income or the family's expenses was submitted to support the assertion that the applicant's husband would suffer financial hardship as a result of separation from the applicant. 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)). Income tax returns for 2002 submitted with the applicant's affidavit of support do indicate, however, that the applicant's husband earned \$23,648 and their total income on their joint return was \$31,354. Further, the record does not establish that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband states that he would suffer emotional hardship due to separation from the applicant, but there is no evidence provided concerning his mental health or the potential emotional or psychological effects of such a separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The applicant's mother states in her letter dated December 5, 2003 that the applicant is her only means of financial support while living in the United States, but no evidence was submitted to support this assertion. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra* (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's mother further states that it would devastate her to know that her only child would be separated from her family. No evidence was submitted to document the applicant's family ties in the United States or otherwise support an assertion that her mother would suffer hardship beyond the common effects of removal if the applicant were removed from the United States.

Any emotional or financial hardship the applicant's husband and mother would experience if she were removed from the United States appears to be the type of hardship that a family member would normally

suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). No information or evidence was submitted to support a claim that the applicant’s husband or mother would suffer extreme hardship if either of them relocated to Jamaica with the applicant. Therefore, the AAO cannot make a determination of whether the applicant’s husband or mother would suffer extreme hardship if they moved to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her Lawful Permanent Resident spouse or mother as required under section 212(i) of the Act.

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. 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.