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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

Office: KINGSTON, JAMAICA

Date: **AUG 03 2009**

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:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Kingston, Jamaica, 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 December 23, 2001. The applicant is the beneficiary of an approved Petition for an Alien Fiancé(e) (I-129F) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with his U.S. citizen fiancée¹.

The OIC found that the record does not contain persuasive information or documentation that the applicant's qualifying relative is going through extreme difficulties adequate enough to waive the bar to admission in his case. The application was denied accordingly. *Decision of the OIC*, dated October 30, 2006.

On appeal, the applicant's U.S. citizen fiancée states that the OIC erroneously concluded that she had not and is not suffering extreme hardship and that he failed to take into consideration certain factors in their case like their marriage. She states that she will submit a brief and evidence within thirty days. *Form I-290B*, dated November 25, 2006.

The AAO notes that it has now been over thirty days and the applicant has not submitted additional documentation, thus the current record will be considered the complete record.

The AAO notes that if an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

- (a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

The record indicates that on December 23, 2001, the applicant presented a photo-substituted Canadian passport in an attempt to gain entry into the United States.

¹ The AAO notes that the applicant indicated that _____ is his spouse on the Application for Waiver of Inadmissibility (Form I-601) and on supporting documents. However, the applicant did not indicate that he was married on his Application for Immigrant Visa (DS-230), which he signed on January 21, 2003. The record does not contain a copy of the applicant's marriage certificate. Consequently _____ will be referred to as the applicant's fiancée in this decision.

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 applicant experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes 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 record of hardship includes a letter from the applicant, a letter from the applicant's fiancée, an affidavit from the applicant's fiancée, and a letter from a family friend.

The AAO notes that extreme hardship to the applicant's fiancée 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 of 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.

In his letter, the applicant apologizes for presenting a fraudulent, photo-substituted Canadian passport in an effort to gain entry into the United States. *Applicant's Letter*, undated. [REDACTED] states that she has been having a hard time emotionally and that she cries herself to sleep every night because she is not with the applicant. *Letter from [REDACTED]*, dated December 20, 2006. She states that she loves her husband dearly and that they have been married almost three years. She also states that she would love the opportunity to live with her husband and share their life together. *Id.* The [REDACTED] states, in her affidavit, that she and her husband maintain contact by telephone and that she visits him in Jamaica as much as her work will allow. *Affidavit from [REDACTED]* dated August 17, 2005. She states that she relies on the applicant for comfort and companionship and that it has been very hard for her to live alone and without him. [REDACTED] states that she is anticipating the financial contributions that her spouse will make to their household once he is allowed to enter the United States, and that she currently works full-time, but a second income would help her significantly. Finally, she states that she lives alone and needs her husband for emergency purposes as someone she can rely on in her older years. She states that she is not disabled or incapacitated in any way, but needs the applicant in the event of illness or infirmity. *Id.* The record also contains a letter from the applicant's family friend, [REDACTED] Ms. [REDACTED] states that [REDACTED] has been very depressed and not able to function correctly at time without the applicant in the United States. *Letter from [REDACTED]*, dated December 20, 2006.

The AAO notes that the record does not contain documentation to support the assertions regarding hardship suffered by [REDACTED] nor does it address the possibility of the [REDACTED] relocating to Jamaica to be with 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)).

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 fiancée 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.