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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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**U.S. Citizenship  
and Immigration  
Services**

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FILE:

Office: MIAMI, FL

Date: JUN 11 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:

**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, 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 pursuant to 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 admission to the United States by fraud or willful misrepresentation. The applicant's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded 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*, at 3, dated September 28, 2006.

Counsel asserts that the district director erred in reviewing the applicant's documentation, basing her decision on opinion and not actual facts, and that the applicant's U.S. citizen spouse and daughter would experience extreme hardship. *Form I-290B*, received October 24, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statements, other relevant statements, the applicant's spouse's medical records, country conditions information on Jamaica, a psychological evaluation, and immigration records related to the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on August 15, 1991 the applicant attempted to be admitted to the United States by presenting a fraudulent U.S. birth certificate. Counsel states that the applicant used a U.S. birth certificate that did not belong to her when she applied for admission on August 15, 1991, she immediately admitted that it was not her birth certificate, she had a nonimmigrant visa when she attempted entry, she was not in possession of her passport as her previous husband had taken it, her passport had admission stamps for trips she did not make, that the applicant's spouse suspects her previous husband was using her passport to bring people to the United States, her passport was eventually retrieved from a woman in Jamaica to whom her previous husband had given it, and her previous husband physically and mentally abused her with horrific acts of violence. *Brief in Support of Appeal*, at 2-4, dated November 24, 2006.

Counsel states that it is common for battered women to return over and over to abusive husbands, battered women are capable of very bizarre behavior under the coercion and fear of a battering spouse, the applicant had been battered since the age of 13, her strange behavior makes sense, that she did not purchase the birth certificate but was reluctant to tell the immigration officer at the airport that her previous husband purchased it because she was terrified of him, and she is not inadmissible under section 212(a)(6)(C)(i) of the Act as she acted under duress. *Id.* at 6-8. The AAO notes that the record does not include sufficient evidence that the applicant's misrepresentation was not willfully made. Counsel states that according to *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), an alien cannot be inadmissible for attempting to enter with fraudulent documents if the alien voluntarily admits his or her true identity, even after presenting the documents. *Id.* at 10. The AAO

notes that the record does not include sufficient evidence that the applicant timely retracted her misrepresentation. The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. *9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* In the present case, the applicant's retraction was made during her secondary inspection, not during her primary inspection, her first opportunity to correct her misrepresentation. Therefore, the AAO finds that the applicant's retraction was not timely.

Counsel states that the applicant had a nonimmigrant visa, she entered the United States towards the end of 1991 with that visa and her Jamaican passport, and she did not commit document fraud as she would have been admissible to the United States on August 15, 1991 based on the true facts. *Id.* at 11-12. The record reflects that the applicant was attempting to enter the United States as a U.S. citizen. Based on the true facts, she would not have been admitted as a U.S. citizen. The AAO also notes that, even if the applicant had been seeking admission as a nonimmigrant on August 15, 1991, the existence of a U.S. visitor's visa that was not in her possession at the time of entry would not have allowed her admission to the United States. Section 212(a)(7)(B) of the Act excludes individuals seeking nonimmigrant admission to the United States who are not in possession of a valid passport and nonimmigrant visa or border crossing card at the time of entry. Based on the applicant's misrepresentation, she is inadmissible to the United States pursuant to 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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the

applicant or her child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Jamaica or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Jamaica. Counsel states that the applicant's spouse and daughter were born and raised in the United States, they have never lived or worked in Jamaica, there is no indication that the applicant's spouse could find employment due to his age and health, and there is no indication that he has any connection to, or relatives in, Jamaica. *Brief in Support of Appeal*, at 14. The applicant states that her spouse suffers from high blood pressure, tore his rotator cuff and suffered a severe shoulder sprain in September 2005, he has limited mobility in his arm, he has lived his entire life in the United States, he could not start his life over in a new country due to his age, he is almost retired and he would be giving up a lot with his job. *Applicant's Statement*, at 1-2, dated April 4, 2006. The applicant's spouse's medical records have been submitted and establish that in September 2005 the applicant's spouse suffered a shoulder injury and that he has hypertension. Counsel states that the applicant's daughter is an honor student, has the ability to go to college and contribute as a professional, and she would be deprived of her future if she relocated to Jamaica. *Brief in Support of Appeal*, at 17. Counsel details the high crime levels in Jamaica. *Id.* at 18. The record includes evidence of country conditions in Jamaica, including an October 25, 2006 U.S. Department of State Consular Information Sheet for Jamaica; a July 7, 2005 article from the Council on Hemispheric Affairs; and a February 3, 2006 CRS Report for Congress on Conditions in Jamaica. The applicant's daughter details the difficulties in her life and the difficulties that she would encounter in Jamaica. *Applicant's Daughter's Statement*, at 1-4, undated. However, the record does not include evidence of how the applicant's daughter's hardships would affect the applicant's spouse, the only qualifying relative. While country conditions materials indicate that health care in Jamaica is more limited than in the United States, the record does not establish that the applicant's spouse's medical problems could not be treated in Jamaica. In addition, the information on poverty and high levels of unemployment (15% nationally) in the materials provided is too general in nature to prove that the applicant and her spouse would not be able to obtain employment in Jamaica. Information on the high levels of drug-related crime and gang violence in Jamaica also fails to

establish how these risks would affect the applicant's spouse. While the applicant's spouse may encounter difficulties in Jamaica, the applicant has provided insufficient evidence that he would suffer extreme hardship as a result of relocating to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse's health is deteriorating due to vascular disease, he is unable to perform routine household functions without the aid of the applicant and he has no one else to assist him. *Brief in Support of Appeal*, at 15. Counsel states that the applicant makes her spouse's medical appointments, buys his medicine and administers his medicine. *Id.* at 16. Counsel states that the applicant's daughter would have no one to care for her in the United States. *Id.* at 18. The applicant states that her spouse suffers from high blood pressure, he tore his rotator cuff and suffered a severe shoulder sprain in September 2005, he has limited mobility in his arm, he relies on her around the house and his health would deteriorate significantly if she were removed from the United States. *Applicant's Statement*, at 1-2, dated April 4, 2006. The applicant states that she and her daughter have never been separated. *Id.* at 1. The applicant's ex-spouse's daughter, who views the applicant as her mother, states that that her father abused her, the applicant and the applicant's daughter physically, mentally and emotionally on a continuous basis. *Applicant's Ex-Spouse's Daughter's Statement*, at 3, dated November 22, 2006. The applicant's daughter details the difficulties in her life and the difficulties that she would encounter without the applicant. *Applicant's Daughter's Statement*, at 1-4. The applicant's daughter's psychologist states that the applicant's daughter is exhibiting symptoms of mild depression. *Psychological Evaluation*, at 1, dated November 20, 2006. However, the record does not include evidence of how the applicant's daughter and ex-spouse's daughter's hardships would affect the applicant's spouse. The applicant's spouse states that he has vascular problems, his legs are swollen, he is unable to do work around the house, he cannot tolerate being on his feet for extended periods of time, the applicant takes care of his needs and the household's needs, they attend church together, the applicant is his closest friend, and he would suffer extreme hardship without her. *Applicant's Spouse's Statement*, at 1-2, dated November 21, 2006. The AAO acknowledges the statements made by the applicant's spouse about the role that the applicant plays in his life and health care. However, the record provides insufficient evidence of his need for her support. The AAO observes that a prescription notation from a medical doctor states that the applicant's removal would cause unnecessary medical hardship to her spouse, who has been diagnosed with hypertension. This statement, however, fails to define the nature or extent of the medical hardship cited and, therefore, is of diminished evidentiary weight in this proceeding. Based on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that her spouse would suffer extreme hardship if he were to remain in the United States without her.

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 she 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.