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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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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: KINGSTON, JAMAICA Date: MAY 13 2009

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:

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, 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 attempted to enter the United States at Miami, Florida on January 8, 1996 as a B-2 visitor with a fraudulent stamp in his passport to conceal the fact that he had previously remained in the United States beyond the date his authorized stay expired. He 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 to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his wife.

The officer-in-charge 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 January 19, 2007.

On appeal, the applicant's wife states that she has not seen the applicant in a year and is sick and needs her husband's support. *See Notice of Appeal to the AAO (form I-290B)* dated February 8, 2007. She states that she has been undergoing tests and treatment for cervical cancer and because of the side effects and stress she cannot be a mother to her son. *Id.* In support of the waiver application and appeal, the applicant submitted a letter from his wife and medical records and bills for his wife. 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.

The applicant was also found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period on one year or more. The decision of the officer-in-charge states that the applicant entered the United

States on July 20, 1994, and after his period of authorized stay expired, he remained in the United States until departing in December 1995. The AAO notes that even if the applicant had been unlawfully present before departing the United States in December 1995, he was not inadmissible under section 212(a)(9)(B)(i) of the Act because that provision did not enter into effect until April 1, 1997 and applies only to unlawful presence beginning on or after that date.

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 forty year-old native and citizen of Jamaica who resided in the United States from July 1994 to December 1995. He attempted to conceal the fact that he had previously remained past his period of authorized stay by presenting a fraudulent passport stamp when seeking admission to the United States in January 1996. The applicant's wife is a thirty year-old native and citizen of the United States whom the applicant married on November 4, 2004. The applicant resides in St. Elizabeth, Jamaica and his wife resides in Miami, Florida.

The applicant's wife asserts that she suffers from a medical condition that makes her unable to be a mother to her son and she required the support of the applicant. In support of this assertion she submitted copies of medical appointment notices at the Jackson Memorial Hospital Medical Center on March 14, 2006, December 28, 2006, and January 25, 2007. The purpose of the appointments is

not specified, though it appears that the January 25, 2007 appointment was for a cervical cancer screening or related procedure. The applicant also submitted copies of medical bills, but they do not specify the service or treatment received by the applicant's wife. No other information was provided concerning the medical condition, such as a letter in plain language from a physician describing the exact diagnosis and nature of any medical 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.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The applicant's wife claims she is being treated for cervical cancer and needs the applicant's support and assistance, but the evidence on the record does not establish that she suffers from this condition. 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)). The evidence on the record does not establish that the applicant's wife's suffers from a serious medical condition that would cause her to suffer extreme hardship if she remained in the United States without the applicant or were to relocate to Jamaica.

The applicant's wife states that she needs her husband and without him it has been very lonely. *Letter from [REDACTED] submitted with I-601 Application*. Although she claims she is suffering emotional hardship due to separation from the applicant, there is no evidence provided concerning her mental health or the emotional or psychological effects of their 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 her distress over being separated from her husband 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.

Any hardship the applicant's wife is experiencing 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 claim was made that the applicant's wife would suffer extreme hardship if she relocated to Jamaica with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 his U.S. citizen spouse 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.