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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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: KINGSTON, JAMAICA Date: MAY 15 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 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 Officer in Charge, Kingston, Jamaica. The matter 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The officer in charge denied the Application for Waiver of Grounds of Excludability (Form I-601) as a matter of discretion. *Decision of the Officer in Charge*, dated November 10, 2004.

On appeal, counsel contends that the officer in charge abused his discretion in denying the waiver application and claims that consideration should have been given to the totality of factors showing that the applicant's wife would suffer extreme hardship if the waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating that they were married on December 13, 2001; an affidavit from Ms. [REDACTED] and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien. . . .

The record shows that the applicant admitted under oath that he entered the United States on January 29, 2002, using a C1/D nonimmigrant crew visa several months after he stopped working

for the ship in order to live with his wife. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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, 565-566 (BIA 1999), provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

states she has a daughter from a previous relationship and that the applicant is the only father her daughter has ever known. states that the applicant treats her and her daughter very well. She further states that she moved to Florida, where the applicant's two brothers live, in anticipation of the applicant's emigration to the United States. currently shares an apartment with a roommate and works as a manager of a grocery store while her daughter is temporarily living with 's mother in New York until the end of the school year. also states that the applicant is a professional tailor, but has very little work in Jamaica at this time, and that he has two children in Jamaica. states that she and the applicant would like to have a home in the United States where they and their children can all live together. In addition, states she is very close with her mother and could not move to Jamaica because it would be hard to be so far away from her mother. Furthermore, states she cannot imagine taking her daughter to live in Jamaica, a poor country that does not have the same level of educational opportunities or health care as the United States. claims "her entire life would be turned upside down" if her husband's waiver application were denied and that she has experienced a great deal of stress and anxiety.

The AAO recognizes that has endured and will continue to endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. Although contends she has suffered a great deal of stress and anxiety,

there is no evidence in the record indicating that the applicant's symptoms have risen to the level of extreme hardship. There is no medical documentation in the record, no psychological evaluation or report in the record, and no indication [REDACTED] has sought or received any sort of treatment. Rather, their situation, if [REDACTED] decides to remain in the United States, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

In addition, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if she moved to Jamaica with her husband to avoid the hardship of separation. Her claim that it would be hard to be far away from her mother and that Jamaica is a poor country with fewer educational opportunities and health care facilities does not rise to the level of extreme hardship. The record indicates that [REDACTED] lives in Florida and that her mother lives in New York. [REDACTED] does not specify how often she is in contact with her mother, how often they visit each other, or whether or not her mother would be able to visit her in Jamaica.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.