



U.S. Citizenship
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Services

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FILE:

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Office: CHICAGO, IL

Date:

OCT 01 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:

[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.

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, Chicago, Illinois 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States 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 in the United States with her spouse and her lawful permanent resident child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 6, 2005.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, tax statements for the applicant and her spouse; W-2 Forms for the applicant and her spouse; employment letters for the applicant and her spouse; a statement from the applicant; a statement from the applicant's child; a statement from the applicant's spouse; a statement from a counselor at the applicant's child's school; a statement from the applicant's spouse's teacher; a college enrollment letter for the applicant; a grade transcript for the applicant; a car payment statement; telephone bills; utility bills; a car insurance policy; a medical bill; and a bank statement. The entire record was reviewed and considered in rendering 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.

The record reflects that on October 25, 1997 the applicant procured admission into the United States by presenting a fraudulent passport and visa at a port of entry. *Form I-601, Application for Waiver of Grounds of Excludability; Statement from the applicant*, dated November 11, 2003. Based on her presentation of fraudulent documents at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant or her child would experience if her waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i) and will be considered only to the extent that it affects the applicant's spouse. The only relevant hardship in the present case is the hardship that would be suffered by the applicant's spouse if the applicant is removed. If 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States 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 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Jamaica, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Jamaica. *Form G-325A, Biographic Information, for the applicant*. The record does not address whether the applicant's spouse has family members in Jamaica. Counsel asserts that the applicant's spouse left Jamaica in 1990 and has since become a productive, educated member of the United States. *Attorney's brief*. He asserts that the applicant's spouse has established an extensive network of personal contacts that will help him progress in his field, and that he does not have similar contacts in Jamaica and that his standard of living would be dramatically reduced. *Id.* He further notes there are fewer job opportunities for individuals in the applicant's spouse's field in Jamaica and that his standard of

living would be dramatically reduced. *Id.* While the AAO acknowledges these assertions, it notes the record does not include documentation to support them. While counsel cites to a website that he states provides proof of the low GDP per capita in Jamaica, the record includes no documentary evidence regarding the economic situation in Jamaica or that demonstrates employment opportunities are not available to individuals in the applicant's field. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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 record does not further address how the applicant's spouse would be affected if he resides in Jamaica. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Jamaica.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant states her spouse and child would be devastated by being separated from her. *Statement from the applicant*, dated November 11, 2003. She notes that her son has already experienced the pain of being separated from her for five years. *Id.* While the AAO acknowledges the applicant's statements and the letter from the applicant's child's school counselor who indicates that being separated from the applicant would have a harmful effect on his future, it again notes that the applicant's lawful permanent resident child is not a qualifying relative for purposes of this case and the record does not demonstrate how the hardship of being separated from his mother would affect his stepfather. Counsel notes that if the applicant's child were to leave the United States, the applicant's spouse would lose the close relationship he has with his stepson and this would compound the emotional impact of losing the applicant. *Attorney's brief*. Counsel also states that if the applicant's son were to return to Jamaica, the applicant's spouse would be unable to ensure he receives the kind of education available to a lawful permanent resident. The AAO again acknowledges these claims, but does not find the record to contain documentation that establishes the applicant's spouse would experience extreme emotional hardship if his stepson, as well as the applicant, relocated to Jamaica.

If the applicant's child remains in the United States with her spouse, counsel contends that the responsibility of caring for and providing guidance to his stepson would result in extreme hardship to the applicant's spouse. Counsel asserts that the applicant's spouse would be required to reduce the amount of hours he is capable of working in order to care for the applicant's child and that his career opportunities and income would decrease dramatically. *Id.* The record, however, fails to establish that the applicant's spouse's employment would preclude him from assuming responsibility for his stepson or that his income would be reduced as a result. Furthermore, the record does not include documentation, such as published country conditions reports, to demonstrate that the applicant would be unable to contribute to the financial well-being of her family from outside the United States. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 AAO acknowledges the difficulties that would be faced by the applicant's spouse as a result of her inadmissibility. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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(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.