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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE: [REDACTED]

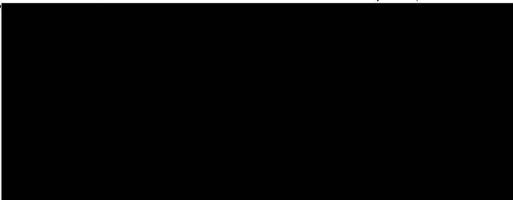
Office: SAN FRANCISCO, CA

Date: AUG 04 2006

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B) and 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California. 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 determined to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission to the United States by fraud or willful misrepresentation and for having been unlawfully present in the United States for more than one year. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

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*, dated April 5, 2004.

On appeal, counsel contends that the decision of the district director failed to properly assess the extreme hardship that the applicant's spouse would suffer if the applicant departed from the United States. Counsel states that the applicant's spouse is currently financially dependent on the applicant and is unable to work owing to complications from cancer. Counsel indicates that the applicant's spouse has a daughter in the United States and therefore would be unable to relocate outside of the country with the applicant. *Form I-290B*, dated May 3, 2004. Counsel indicates that she will provide a brief and/or other evidence to the AAO within 30 days. *Id.* The AAO notes that over two years have passed since the filing of the Form I-290B appeal and no further documentation has been received into the record. The appeal will therefore be adjudicated based on the record as it currently stands. The entire record was reviewed and considered in rendering a decision on the applicant's 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 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(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States pursuant to a valid nonimmigrant tourist visa on February 15, 1985. The applicant failed to depart from the United States upon the expiration of her period of authorized stay and remained unlawfully in the United States. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until 2001, the date of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

The record further reflects that the applicant obtained entry to the United States with a passport in the name of another individual on or about June 2001. This representation constitutes a misrepresentation of material fact rendering the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that while the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act barred her from seeking admission within ten years of the date of her last departure, inadmissibility under section 212(a)(6)(C)(i) of the Act results in a permanent bar to admission absent approval of an application for waiver of inadmissibility.

Section 212(a)(9)(B)(v) and 212(i) waivers of the bar to admission resulting from violations of sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act respectively are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse.

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 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 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.

On appeal, counsel contends that the decision of the district director fails to properly assess the extreme hardship that the applicant's spouse will encounter as a result of separation from the applicant. *Id.* The AAO finds, however, that the decision of the district director properly considered both the statement of hardship and the physician letter submitted by the applicant in support of the application. The decision of the district director concluded that the submitted documentation did not evidence a level of hardship that could be qualified as extreme. In the absence of substantiation, the AAO upholds the finding of the district director. While any suffering endured by the applicant's spouse is regrettable, the submitted evidence fails to establish extreme hardship as required by statute. The submitted letter from a physician states that the applicant's spouse underwent hip replacement several years ago as a result of cancer. *Letter from [REDACTED] MD*, dated May 7, 2003. The letter indicates that the applicant's spouse requires a replacement of his prosthesis and that he suffers back pain as a result of the deterioration in his hip. *Id.* The record fails to establish that the applicant's spouse is unable to undergo surgery in the absence of the applicant or that the presence of the applicant is required for her spouse's daily functioning as a result of his condition. Although the medical condition of the applicant's spouse is unfortunate, the record does not indicate that he is permanently incapacitated or unable to care for himself and therefore fails to articulate a basis for a finding of extreme medical or physical hardship.

Moreover, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address the qualifying relatives' family ties outside the United States; the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' 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 relatives would relocate. In the absence of documentation addressing these subjects, the AAO is unable to determine whether or not extreme hardship would be imposed on the applicant's spouse as a result of relocating to Jamaica in order to remain with the applicant. The AAO acknowledges counsel's assertion that the applicant's spouse has a daughter who resides in the United States from whom he would be separated if he relocated to Jamaica. *Form I-290B*. The record fails to establish the extent or nature of the relationship between the applicant's spouse and his daughter including, but not limited to the child's age, custody and financial support and therefore fails to offer a basis for a finding of extreme hardship imposed as a result of relocation to Jamaica by the applicant's spouse.

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. Moreover, the AAO notes that 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 AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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, however, 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 sections 212(i) and 212(a)(9)(B) 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.