U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

H4

FILE: [redacted] Office: KINGSTON, JAMAICA Date: JUN 28 2007

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Kingston, Jamaica, denied the Form I-601, Application for Waiver of Ground of Excludability under Sections 212(a)(9)(B)(v) and (i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a31-year-old native and citizen of Jamaica who was found inadmissible to the United States. The record reflects that the applicant is the spouse of a native-born U.S. citizen. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his wife. He seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge found that the applicant was inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, and that he failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, the applicant submits a letter from his wife explaining that she loves the applicant and would like to live with him as husband and wife. *See* Letter from [redacted], dated November 30, 2005. The appeal is accompanied by a statement from applicant's mother-in-law in support of the applicant's claim. *See* Letter from [redacted], dated November 30, 2005. Lastly, the appeal is accompanied by letters from the applicant's wife supervisor and from the applicant. *See* Letters from [redacted] and Applicant's Letter.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

> (1) The Attorney General [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 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 officer in charge found the applicant to be inadmissible on the basis of his illegal entry and his unlawful presence in the United States. The record reflects, and the applicant admits, that he arrived in the U.S. Virgin Islands by boat in 2002 and entered without inspection. The applicant then remained in the United States until 2004. Based on this facts, the AAO finds that the applicant is inadmissible under section 212(a)(9)(B) of the Act.[1] The question remains whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's spouse, [redacted], is a 40-year-old native-born U.S. citizen. The applicant and his spouse were married on February 21, 2004. The applicant's wife resides in the U.S. Virgin Islands, where she is employed by the U.S. Postal Service. The applicant's wife's mother also resides in the U.S. Virgin Islands.

[1] The AAO finds no evidence in the record supporting a finding of inadmissibility under section 212(a)(6)(C)(i). Eligibility for a waiver under section 212(i) of the Act is therefore not at issue in this case.

The applicant's wife states that the separation from her husband is causing her great suffering and having negative effects on her physical condition. *See* Letter from [redacted], dated November 30, 2005. The applicant's wife claims that she suffers from asthma and that separation from her husband has exacerbated her medical condition, and caused her stress, depression and weight gain. *Id.* She also states that she earns a good salary, and that she is concerned that she would not be able to enjoy the same standard of living should she relocate to Jamaica. *Id.*

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse rises to the level of extreme. The AAO notes that the applicant's wife holds a steady job as a mail handler, and earns a good salary. The AAO notes that the applicant's mother-in-law resides in the U.S. Virgin Islands. The AAO notes that, as a U.S. citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Should she decide to remain in the United States, separated from her husband, there is no evidence that she could not continue to rely upon her mother for emotional support and assistance. The applicant's wife claims that her asthma and depression have worsened since the applicant's departure from the United States. The record, however, does not contain any documentation indicating that the applicant's wife's medical condition is not being controlled or suggesting that her health would improve if the applicant returned to the United States. There is also no evidence in the record that relating to the adequacy of medical treatment the applicant's wife would receive should she relocate to Jamaica. Although the AAO acknowledges the applicant's wife's claims that she would experience hardship if she continues to be separated from her husband, the AAO finds that her hardship is typical for any person in her circumstances and does not rise to the level of "extreme" as required by the statute. The AAO further finds that the hardship to the applicant's wife, should she decide to relocate to Jamaica, is common to other spouses facing the same circumstances and does not rise to the level of "extreme." *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). The AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.