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**U.S. Citizenship  
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[REDACTED]

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FILE:

[REDACTED]

Office: NEWARK

Date:

APR 12 2010

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).

*Michael Hummer*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Jamaica. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting material facts to gain admission into the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that, "In adjudicating the I-601 waiver, USCIS should have considered the child's inability to live in a foreign country without readily available medical care, psychological factors, [REDACTED] role as the primary provider for his family, and consideration of non-economic hardships resulting from removal such as impact of separation."

In support of the application, the record includes, but is not limited to, the applicant's marriage certificate, the applicant's child's birth certificate, the applicant's spouse's naturalization certificate, affidavits from the applicant and his spouse, financial documentation and family photographs. 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.

The record reflects that on May 30, 2002 the applicant was admitted to the United States with a P-3 visa. P-3 visas are granted to artists or entertainers coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation. 8 C.F.R. § 214.2(p)(6). The applicant stated in an attachment to his Application to Register Permanent Residence or Adjust Status (Form I-485):

I obtained my P-3 visa at the U.S. Embassy in Kingston by misrepresenting the fact that I was part of an entertainment group. I was introduced to an entertainment coordinator in St. Catherine, Jamaica and I paid him US\$2,500.00 for her [sic] to include me in the group for the visa.

The director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having procured a P-1 visa by willful misrepresentation of material facts. The record supports this finding,

and the AAO concurs that this misrepresentation was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

The AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant and his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its

discretion.” (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that the applicant wed [REDACTED], a naturalized U.S. citizen, in New York, New York on March 6, 2005. The applicant and his spouse have a two-year-old U.S. citizen child, [REDACTED]. Hardship to the applicant’s child will be considered insofar as it results in hardship to the applicant’s spouse.

On appeal, counsel states that the applicant’s spouse’s ties and emotional support are in the United States. Counsel states that returning to Jamaica would be difficult for the applicant’s spouse because she would be raising a very young child while being away from her support group of friends. The record contains a May 11, 2006 affidavit from the applicant’s spouse stating that if she moved from Jamaica she would lose her home and friends. She states that her entire immediate family lives in the United States as well as most of her aunts, uncles and cousins.

The AAO acknowledges that the applicant’s spouse would suffer emotional hardship as a result of her separation from her friends and family members in the United States. However, she has failed to provide any corroborating evidence of her family and community ties in the United States. The record does not demonstrate that the applicant’s immediate and extended family members permanently reside in the United States. Nor does it establish her community ties and binding friendships. 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)). While the applicant’s spouse’s assertions are relevant and have been considered, they cannot be given significant weight in the absence of supporting evidence.

Counsel asserts that the applicant worked at “odd jobs” while he was in Jamaica. Counsel states that the applicant would be faced with the prospect of unemployment in Jamaica and the inability to support himself and his family.

The AAO finds that counsel’s assertion is inconsistent with the record. The applicant’s Biographic Information sheet (Form G-325A) shows that the applicant was self-employed as a shoemaker in Bridgeport, Jamaica from 1997 to 2002. The biographic page of the applicant’s passport corroborates his profession as shoemaker. Furthermore, the applicant’s spouse states in her affidavit that when she first met the applicant, he was living in Jamaica and he was employed as a shoemaker. There is nothing in the record that indicates the applicant was unemployed or working at “odd jobs” while he was residing in Jamaica.

Counsel asserts that medical care is not accessible in Jamaica because of the poor economic conditions. Counsel states that the economic conditions of Jamaica are extremely poor and the crime rate is very high. Counsel states that Jamaica is a dangerous place for women to live because they are abused and it is very difficult for a woman to find work. Counsel states that the applicant’s child would have to adapt to an “alien environment” if he relocated to Jamaica. Counsel states that the quality of education in Jamaica is poor due to inadequate resources. Counsel states that the applicant’s child could suffer “developmental issues” if he is “torn away from the only environment which he knows.” Further, the applicant’s spouse asserts in her affidavit that “I cannot live in a country where I know I will not have a better life, like the one I sought for myself, when I decided to come to the United States.”

The AAO notes that the applicant’s son is only two years old. There is no indication that he would suffer any hardship at his age adjusting to residence in Jamaica. The applicant and his spouse are both natives of Jamaica and presumably are familiar with the culture and customs of the country. Counsel’s assertion that the applicant’s child could suffer “developmental issues” is based on speculation alone and is not supported by any corroborating evidence. The record does not demonstrate that the applicant’s child currently has “developmental issues” or that he requires special medical attention that is only available in the United States. Further, counsel has failed to support his assertions regarding the poor economic conditions and abuse of women in Jamaica with news articles or country condition reports. The AAO notes that according to the applicant’s spouse’s affidavit, she resided in Jamaica until she entered the United States on January 28, 1996 when she was 24 years old. The applicant spouse has not asserted or discussed the hardship(s) she may have suffered when she was residing in Jamaica. The AAO understands that the applicant’s spouse has concerns about relocating to Jamaica because she has a “better life” in the United States. However, this is a typical concern of family members who relocate abroad due to an immediate relative’s inadmissibility, and does not rise to the level of hardship. In *Shooshtary v. INS*, the Ninth Circuit Court of Appeals noted 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.” 39 F.3d 1049, 1051 (9th Cir. 1994).

Counsel asserts that if the applicant’s spouse remains in the United States without the applicant, “she would suffer extreme hardship because she would be without her partner, her friend, her husband

whom she had built a life with, with the expectation that they would live their lives together.” Counsel states that the applicant’s spouse “will be faced with the difficult task of raising her young child alone without anyone to rely on for financial or emotional support.” Counsel states that the applicant’s spouse would have to increase her hours of employment to provide for her child. Counsel states that the applicant’s spouse “has only recently began [sic] to work and as such is only making a minimal salary which would not be sufficient to support herself, her infant child and a spouse who would be living in a foreign country.” Counsel states that the applicant’s spouse would need to place her child in a daycare program, which would result in additional expenses and little time spent with her child. Counsel states that the applicant’s spouse “may have to supplement whatever meager income she can derive, by relying on welfare benefits.” Counsel states that the applicant’s child would not have his father present in his daily life and his mother would be less available to care for him as a single parent.

The affidavit from the applicant’s spouse further reiterates that she would suffer emotional and financial hardships if she were separated from the applicant. The applicant’s spouse asserts, “I would be forced to support [REDACTED] in Jamaica . . . this would be impossible to do on one income.” She further asserts, “Apart from the financial hardship, I do not know how I would be able to cope with the emotional distress of being separated from my husband who I consider my soul mate and best friend.”

The AAO observes that the record does not contain any documentary evidence to reflect the applicant’s spouse’s current employment and income. The applicant’s spouse’s Biographic Information Sheet (Form G-235A) dated June 27, 2005 states that she is employed as a nurse assistant for [REDACTED] in Hackensack, New Jersey. Her affidavit dated May 11, 2006 states that she is in nursing school. The applicant’s spouse has not indicated on her November 21, 2007 appeal if she is now employed as a nurse. The Affidavit of Support (Form I-864) filed by the applicant’s spouse shows that she earned \$24,789.52 in 2004. The record does not contain an employment verification letter or earnings and deductions statements to document the applicant’s spouse’s income since this date. Nor does the record demonstrate the applicant’s employment and income during his residence in the United States. The applicant’s Biographic Information Sheet (Form G-325A) dated June 27, 2005 states that he is employed as a chef with [REDACTED] in Brooklyn, New York. The applicant has not submitted an employment verification letter or earnings and deductions statements to corroborate his employment with [REDACTED] or any other establishment. Since the record does not demonstrate the applicant’s spouse’s current earnings, the loss of household income she would suffer as a result of the applicant’s departure, and her major expenses such as home mortgage or rental payments, the AAO cannot make a determination of financial hardship to the applicant’s spouse due to the applicant’s inadmissibility.

Finally, the AAO notes that counsel’s assertions regarding the hardship the applicant’s spouse would suffer if she relocated with the applicant to Jamaica or remained in the United States separated from the applicant are notably inconsistent. In regard to the applicant’s separation from his spouse, counsel contends, “[t]o remove [the applicant] from the United States would leave his wife without any family for her to rely on for any kind of support, be it financial, or emotional and all alone with a young child to raise.” However, counsel also contends that the applicant’s spouse’s “ties are here in

the United States” and “[h]er emotional support is present in the United States.” Counsel states that, “Returning to Jamaica would be very difficult for her, while raising a very young child and at the same time being away from her support group of friends.” Further, the applicant’s spouse states that her entire immediate family lives in the United States as well as most of her aunts, uncles and cousins. While these inconsistencies undermine the claims of hardship to the applicant’s spouse, the AAO nevertheless acknowledges that the applicant’s spouse and child will suffer emotionally if they remain in the United States without the applicant. However, the AAO finds that the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme.

The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, 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 eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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(i) of the Act, the burden of establishing that the application merits approval 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.