

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

115

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

AUG 31 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 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).

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. 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 her husband in the United States.

On January 15, 2004, the interim district director denied the applicant's waiver application, finding that she failed to submit evidence of extreme hardship to a qualifying relative. The AAO rejected the applicant's appeal as untimely filed and returned the matter to the director for consideration as a motion to reconsider. On November 10, 2007, the acting district director considered the additional evidence and determined that the denial of the applicant's waiver application remains undisturbed. This appeal followed.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on April 14, 2001; a letter from Mr. [REDACTED] two letters from Mr. [REDACTED] mother; letters of support, including from the applicant's church; letters from employers; copies of tax and financial documents; photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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, and the applicant admits, that she entered the United States using her cousin's passport and visa. *Written Statement by* [REDACTED], dated February 24, 2003. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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. *See* section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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.

In this case, the applicant's husband, Mr. [REDACTED] states that he loves his wife and that they have learned new things together. He states that their goal is to better their lives, work hard together, and buy a house. Mr. [REDACTED] states that his wife misses her sons, who are in Jamaica, and that he tells her that they will be here soon. He contends that if his wife returns to Jamaica, "it will be hardest thing in the world for [him]." He states that he and his wife "pay/do everything together, all the bills and the rent we do everything together." In addition, Mr. [REDACTED] states that his wife plays a big part in his son's life and that sending her away will hurt a lot of people including her friends and her extended church family. [REDACTED] dated February 23, 2004.

Mr. [REDACTED] mother, [REDACTED], states that she is concerned about her son if his wife were to be sent back to Jamaica. According to [REDACTED], the applicant "contributes a significant part of their household

finances, without this [she] do[es]n't think [her] son could manage" [REDACTED] states that her son had been out of work for the past six to eight months and that her daughter-in-law was their total means of support. *Letters from [REDACTED]*, dated February 27, 2004, and May 1, 2003.

A letter from the pastor at the applicant's church states that the applicant is "an upstanding member of the church community" and that "any disruption in her status would present clear hardship for both [the applicant and her husband]." *Letter from [REDACTED]*, dated February 22, 2004.

After a careful review of the record, there is insufficient evidence that the applicant's husband would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if Mr. [REDACTED] had to move to Jamaica to be with his wife, he would experience extreme hardship. The record shows that Mr. [REDACTED] was born in the United States and he contends he has a son from a previous relationship. If Mr. [REDACTED] were to move to Jamaica, he would be leaving his mother and his son, and would need to adjust to a new life in Jamaica, a difficult situation made even more complicated given the crime and economic situation in Jamaica. The AAO notes that according to the U.S. Department of State, "[c]rime, including violent crime, is a serious problem in Jamaica, particularly in Kingston[, where the applicant is from,] and Montego Bay. While the vast majority of crimes occur in impoverished areas, the violence is not confined Crime is exacerbated by the fact that police are understaffed and ineffective." *U.S. Department of State, Country Specific Information, Jamaica*, dated October 13, 2009. In addition, Jamaica's high unemployment rate of over 14% exacerbates the serious crime problem. *U.S. Department of State, Background Note: Jamaica*, August 9, 2010. In sum, the hardship Mr. [REDACTED] would experience if he had to move to Jamaica is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, Mr. [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of [REDACTED]*, 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).

Regarding the financial hardship claim, although the record contains evidence that the couple's rent in 2003 was \$550 per month, there is no additional information addressing the couple's regular, monthly expenses. In addition, there is no evidence supporting Mr. [REDACTED] mother's contention that Mr. [REDACTED] had not been working for six to eight months and Mr. [REDACTED] himself makes no mention of being unemployed. The record shows that Mr. [REDACTED] worked for Aircraft Service International Group beginning in December 1998, earned \$25,000 per year as a Ramp Supervisor in 2001, and continued to

work there until at least May 2003. *Letter from Danielle Thompson*, dated May 1, 2003 (confirming Mr. ██████ current employment); *Letter from O.C. Bell*, dated April 24, 2001. Without more detailed information, there is insufficient evidence to show that any financial hardship Mr. ██████ may experience if he is separated from his wife is extreme. In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

The AAO acknowledges that Mr. ██████ will experience emotional hardship if he remains in the United States without the applicant, but 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 Mr. ██████ 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.

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 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.