

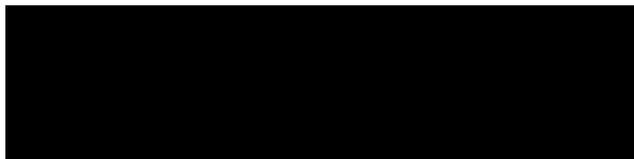
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]

Office: PHILADELPHIA, PA

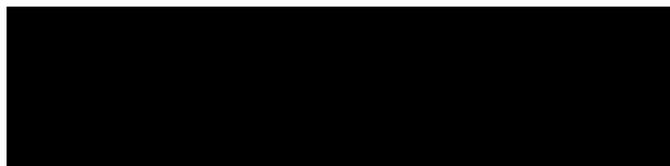
Date:

JUL 20 2010

IN RE: Applicant: [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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania. The decision 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 having procured entry into the United States by presenting a Jamaican passport and non-immigrant visa belonging to another person. The record indicates that the applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his USC spouse and children.

The district director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 23, 2007.

On appeal, counsel states that the applicant's wife will suffer emotional and financial hardships because she will be permanently separated from her husband. Counsel states that the applicant's wife relies on the applicant to take care of their children while she goes to work. Counsel states that the applicant's wife has Type 2 diabetes and relies on the applicant for emotional support and helps her deal with her illness. Counsel also states that if the applicant is removed from the United States, his wife will be left to care for their two children, she will have to incur additional expenses for childcare or reduce her hours in order to care for their children, her income will be reduced and she will be unable to meet her financial obligations. Counsel further states that the applicant's wife will be unable to relocate to Jamaica to live with the applicant because she has Type 2 diabetes, that she requires specialized medical treatment (insulin injections two times per day), which may not be available in Jamaica and that even if the treatment is available, the extreme poverty of Jamaica will make the cost of the medication prohibitive for her. *See Counsel's Brief in Support of Appeal*, dated May 18, 2007.

The record contains, among other things, counsel's brief, dated May 18, 2007, an affidavit from the applicant's spouse including detailed monthly expenses for the family, dated June 26, 2006, a copy of a house deed, a copy of a mortgage loan statement from the Pennsylvania Housing Financial Agency, a copy of a water/sewer bill from the Water Revenue Bureau, a copy of a utility bill from PECO Energy, a copy of a Wachovia Prime Equity line of credit bill, a copy of a bank statement from Crown Banking, a copy of a phone bill from Cavalier Telephones, a copy of a credit card bill from Bank of America, a copy of an estimate/work description from Independence Roofing with handwritten notation "paid with check #109, \$400.00, 01-17-06," a handwritten note from Dr. [REDACTED] dated March 16, 2001, stating that the applicant's wife has Type 2 diabetes, and letters of support from friends and family members. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [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 resident spouse or parent of such an alien....

In the present case, the record indicates that on October 20, 2000, the applicant entered the United States by presenting a fraudulent passport and non-immigrant visa belonging to another individual. On July 12, 2006, the applicant's USC wife filed a Form I-130 on the applicant's behalf. On February 28, 2007, the Form I-130 was approved. On July 12, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On July 13, 2006, the applicant filed a Form I-601. On February 23, 2007, the district director denied the applicant's Form I-485 and Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative.

The AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(a)(6)(C)(i) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect 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).

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

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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). 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).

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Hassan v. INS*, *supra*, the court further held 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 U.S. Supreme Court additionally 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 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 the United States based on the denial of the applicant's waiver request.

Counsel states that the applicant's wife would suffer extreme emotional, financial and physical hardship if she and the applicant were separated because the applicant's removal from the United States will result in permanent separation from his wife. Counsel states that the applicant stayed home and assumed primary responsibility of taking care of their two children while his wife returned to work. Counsel states that if the applicant is removed from the United States, the applicant's wife would "struggle for financial survival" because of her accumulated debt and inability to pay someone to take care of their children while she is at work. *See Counsel's Brief in Support of Appeal*, dated May 18, 2007. The applicant's wife states that the applicant helps her in the house by cooking, cleaning, and most importantly, caring for their younger child and being at home when her older daughter gets out of school so that she does not have to struggle to reach the day-care and after school program to pick up her children. *Affidavit of [REDACTED]* dated June 26, 2006. The applicant's wife also states that if the applicant is deported, she will suffer serious financial problems; that she will not be able to afford to hire a babysitter and pay for after school care for her children; that she will have to go to a shift position, minimize her regular hours so that she can take care of her children, or work part time which will reduce her income, rendering her unable to meet her financial obligations. *Id.*

The record includes a detailed summary of the family's monthly expenses of about \$3,200.00, a letter from the applicant's wife's employer, Prudential Financial, indicating that her income in 2006 was \$34,355.00, and a letter from the applicant's employer, ShopRite, stating that the applicant was hired on November 12, 2006, with a starting salary of \$6.05 per hour and that the applicant worked about 30 hours per week. The AAO notes that the \$400.00 paid to Independence Roofing is a one time expense for roof repair and will not be a recurring monthly expense for the family. *See copy of Estimate/Receipt from Independence Roofing* in the file. The AAO also notes that even without the \$400.00 for the roof repair, the applicant's wife will still have to come up with about \$2,800 for their monthly expenses, which will be extremely difficult for her to maintain given her income level. Additionally, the applicant's wife will have to incur expenses for childcare and after school program for their children.

Were the applicant to relocate abroad due to his inadmissibility, the record indicates that the applicant's wife would be required to assume the role of primary caregiver and breadwinner to their two children without the complete support of the applicant. In addition, due to the young age of the children, the applicant's wife would need to obtain a childcare provider who could provide the constant monitoring and supervision their children require while the applicant's wife works, a costly proposition for the applicant's wife. Alternatively, the applicant's wife would be required to find

employment with a reduced work schedule, as the applicant would no longer be residing in the United States and assisting in the care of the children.

The applicant's wife states that she and the applicant love each other and that they have a child together. She states that her children, are "so much" attached to the applicant that "it would tear our family apart if [the applicant] were sent back to Jamaica." *Affidavit of* [REDACTED] dated June 26, 2006. The applicant's wife further states that she has Type 2 diabetes and gives herself insulin two times per day, that the applicant has been "my rock of support as I learned to grapple with this new illness." *Id.* She states that the applicant helps with cooking and cleaning and making sure that they operate as a close family. *Id.* Finally, the applicant's spouse states that her older daughter from a prior relationship is very close to the applicant and that if the applicant is removed to Jamaica, her daughters will grow up without him, her family would be "torn apart," and that it "would break my heart to see my children under such distress and emotional loss." *Id.* The record includes a handwritten note from Dr. [REDACTED] stating that the applicant's wife has Type 2 diabetes and is under his care. The record also includes supportive letters from friends and family members attesting to the applicant's care and love for his family and that his family relies on the applicant to make a stable home for them. The AAO notes that the evidence in the record is sufficient to establish that separating the young children from the applicant who has played a pivotal role in their day to day care, would cause them emotional hardship and by extension, would cause hardship to the applicant's wife, the qualifying relative.

Based on the totality of the evidence discussed above, the AAO finds that the applicant's wife will suffer extreme hardship if the applicant is unable to reside in the United States due to his inadmissibility.

However, the AAO finds that the applicant has not demonstrated that his spouse will suffer extreme hardship if she joins him in Jamaica. In his brief in support of the appeal, counsel states that the applicant's wife has Type 2 diabetes that requires insulin injections two times per day. *Counsel's Brief in Support of Appeal*, dated May 18, 2007. Counsel states that the medical condition is so severe as to prevent the applicant's wife from traveling to Jamaica to be with the applicant because she needs specialized medical treatment that may not be available in Jamaica, and that even if the treatment is available, the extreme poverty of Jamaica will make the cost of the medication prohibitive for the applicant's wife. *Id.* In her affidavit, the applicant's wife states, "I will not be able to follow [the applicant] to Jamaica if he is deported, because I have diabetes 2 and I need special medical treatment which is not available for me in Jamaica." *Affidavit of Odolyn Pryor* dated June 26, 2006. While the AAO acknowledges claims made by the applicant's spouse, it does not find evidence in the record to support them. The record does not contain documentary evidence such as, a country conditions report on Jamaica that demonstrates that the applicant's wife would be unable to obtain medical care for her Type 2 diabetes in Jamaica. Going on the record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1988) (citing *Matter of Treasure Craft of California*, I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes that the applicant's wife is a native of Jamaica and she has not addressed her family ties there. Further, other than the statement from

the applicant's wife, the record does not include any evidence of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Jamaica. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's wife would suffer extreme hardship if she relocated to Jamaica with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.