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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H5

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date: **MAR 10 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania and 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 found to be inadmissible to the United States under 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and the mother of a United States citizen. She 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 her spouse and their child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 16, 2006.

On appeal, counsel for the applicant contends that the applicant's family would suffer extreme hardship if the applicant is not allowed to remain in the United States. *Form I-290B, Notice of Appeal to the Administrative Appeals Office and attached statement*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, medical records for the applicant's child; statements from the applicant's sister; a statement from the applicant; statements from the applicant's spouse; statements from friends; media articles on crime and violence in Jamaica; a statement from the applicant's spouse; an apartment lease; bank statements; a home alarm bill; a utility bill; medical bills; an earnings statement for the applicant; tax returns for the applicant's spouse; and an employment letter for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 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 record reflects that on March 3, 2003 the applicant was admitted to the United States at Miami, Florida using documents belong to another individual. *Form I-601, Application for Waiver of Ground of Excludability; Form I-485, Application to Register Permanent Resident or Adjust Status.* As such, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant or her child would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Jamaica or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse relocates to Jamaica, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Jamaica. *Naturalization certificate.* His parents reside in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not address whether the applicant's spouse has any family members residing in Jamaica.

Counsel notes that neither the applicant's spouse, who suffers from migraine headaches nor the applicant's child, who has croup, could receive adequate medical care in Jamaica. *Attorney's brief.* The applicant also states that her child would be unable to receive the medical care he needs in Jamaica. *Statement from the applicant*, undated. While the record does not contain proof that the applicant's spouse has any medical problems, it does document that the applicant's child was treated for breathing problems in 2005 and was diagnosed with croup. *Attorney's brief; Medical records for*

the applicant's child showing a diagnosis of croup, dated October 24, 2005. However, it fails to demonstrate that the applicant's child's medical problem is chronic in nature, to indicate the severity of his condition or to establish that it can only be treated in the United States. The record also fails to prove, through published country conditions reports, that the applicant's child would be unable to obtain adequate medical care in Jamaica. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, as previously indicated, the applicant's child is not a qualifying relative for the purposes of this proceeding and the record fails to document how any hardship the applicant's child may encounter upon relocation would affect his father, the only qualifying relative.

Counsel states that Jamaica has a very high crime rate and that cultural differences would also make it difficult for the applicant's spouse to adjust to life there. *Attorney's brief*. Counsel further contends that unemployment levels in Jamaica are so high that the applicant and her spouse would have more difficulty finding jobs there than in the United States. The record includes published media articles documenting the high crime rate in Jamaica. *See published articles*, [REDACTED] dated November 2004 – December 2005. While the AAO acknowledges these articles, it notes that criminal activity occurs throughout the world and there is nothing in the record that indicates the applicant's spouse would be specifically at risk from criminal elements or gang violence in Jamaica. No documentary evidence in the record addresses the Jamaican economy and unemployment rates. Further, although counsel states that cultural differences would make adjustment difficult for the applicant's spouse, the AAO notes that he was born in Jamaica and resided there until he was 20 years old. *Form G-325A, Biographic Information sheets, for the applicant's spouse*. Having considered the aforementioned factors, individually and in the aggregate, the AAO does not find the applicant to have demonstrated extreme hardship to her spouse if he were to reside in Jamaica.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Jamaica. *Naturalization certificate*. His parents reside in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. Counsel contends that the applicant's spouse gets severe headaches that would prevent him from caring for his child. *Attorney's brief*. Although the AAO acknowledges this statement, it again notes that the record does not include medical documentation that establishes that the applicant's spouse suffers from any health problems. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant states that her spouse will be unable to provide financially for their family by himself. *Statement from the applicant*, undated. While the record includes documentation regarding various expenses for the applicant's

family, the AAO finds no evidence of the applicant's spouse's annual income beyond the 2002-2004 tax returns submitted in support of the Form I-864, Affidavit of Support, filed on behalf of the applicant. Although counsel indicates that a 2005 W-2 form was provided for the applicant's spouse, the submitted earnings statement is for another individual. Accordingly, the AAO is unable to determine the financial status of the applicant's family. The AAO also notes that the record fails to establish that the applicant would be unable to contribute to her family's financial well-being from a location other than the United States.

The applicant's spouse states that he would be very emotionally drained and that his heart would be in pieces if the applicant were not with him. *Statement from the applicant's spouse*, undated. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

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(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.