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



U.S. Citizenship
and Immigration
Services

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DATE **DEC 02 2011** OFFICE: BALTIMORE, MD

FILE:

IN RE: APPLICANT:

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 \$630. 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 I-601 waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The applicant is a native and citizen of Jamaica who has resided in the United States since April 9, 2003, when he presented his twin brother's passport and non-immigrant visa to immigration officials for admission into the United States. He 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 to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The District Director concluded the applicant failed to provide evidence that the refusal of his admission would result in extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of District Director* dated August 5, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal as well as an affidavit from the applicant's spouse. In the brief, counsel asserts that, contrary to the District Director's finding that the applicant entered the United States without inspection, the applicant was in fact legally admitted to the United States. *Brief in support of appeal*, September 23, 2009. Counsel further contends given the applicant's admission an analysis under section 245(i) of the Act is inapplicable in the present matter. *Id.*² Counsel lastly states that the applicant has met his burden of proof in showing extreme hardship to his qualifying relative as required by section 212(i) of the Act. *Id.*

The record includes, but is not limited to, the documents listed above, evidence of birth, marriage, and divorce, another brief in support of the I-601 waiver application, copies of federal income tax returns, paystubs and employment letters, evidence of entry into the United States, photographs, as well as other applications and petitions filed on behalf of the applicant. 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:

- (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

¹ While the form I-290B notes both the forms I-601 and I-485 as the related applications or petitions, two separate decisions were issued. Consequently, two separate forms I-290B should have been filed if the applicant wished to have both decisions reviewed. Since the form I-601 is the first form noted on the form I-290B, the AAO will take that as the form being appealed. The AAO will not discuss the merits of the I-485, which, in any event, is not within the jurisdiction of the AAO.

² As previously noted, the AAO will not discuss the merits of the I-485 application.

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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 reflects that on April 9, 2003, the applicant presented his identical twin brother's passport and non-immigrant visa to U.S. immigration officials to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived

outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant contends the “extreme hardship to [REDACTED] is that she will lose the companionship of her husband and partner, if he is denied legal status in the United States.” *Brief in support of appeal*, September 23, 2009. The applicant’s spouse confirms: “I rely on my husband for emotional, spiritual and psychological support. I need and want him in my life.” *Affidavit of applicant’s spouse*, September 24, 2009. The spouse explains this support in further detail: “I was particularly pleased with the way [REDACTED] made me feel about myself. [REDACTED] built up my confidence and self-esteem much more than it had been built up through my professional accomplishments... He taught me to take pride in my history and culture.” *Id.* The applicant’s spouse also describes one specific incident of the applicant’s support: “In late 2007, I was faced with a major medical issue, exacerbated by a stressful work environment, which required invasive surgery. As a result of this development, I returned to my parents in Texas and stayed out of work for over seven weeks. [REDACTED] was by my side every day in the hospital and even stayed in town

for a week helping my Mom nurse me back to health.” *Id.* The applicant’s spouse additionally indicates if the applicant were allowed to remain in the United States, she would give up her career with [REDACTED] in order to “shift [her] attention to marriage, family, and a more traditional lifestyle. [She and the applicant] have every intention of starting an automotive business.” *Id.*

With respect to relocation to Jamaica, counsel indicates the spouse “has deep roots in Beaumont and Dallas, Texas where most of her family still reside[s] today.. [REDACTED] is closely connected to her extended family, as well as to the state of Texas. Indeed, despite [REDACTED] extensive travels abroad for work purposes, Texas remains her abiding home.” *Brief in support of appeal*, September 23, 2009. The applicant’s spouse adds: “If I were required to live outside the United States with my husband, I would have to do so at great sacrifice to my parents, grandparents, siblings, and other family members. Furthermore, I would not be able to contribute to the U.S. society, providing nurturing, support and be a visible, positive, African American role model for my 10 nieces and one nephew.” *Affidavit of applicant’s spouse*, September 24, 2009.

The AAO acknowledges the applicant’s spouse may face some difficulties without the applicant. However, given the lack of evidence of record, the AAO cannot find that the applicant’s spouse would experience extreme hardship upon separation from the applicant. For instance, the applicant’s spouse describes a time period when dealt with a medical issue with the applicant’s assistance. *Affidavit of applicant’s spouse*, September 24, 2009. The applicant’s spouse’s assertion is unsupported by any documentation from a medical services provider with details about whether the condition presently exists, the severity of the complete medical condition, and how it affects her quality of life. Although the applicant’s spouse’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, it is not evident from the record whether the applicant’s spouse would experience hardships above and beyond those which are normally experienced by family members of inadmissible aliens. Given the spouse’s particular financial and employment situation, as well as her ability to travel as evidenced by her extensive overseas travel experience, there is no evidence to support a conclusion that she would face difficulties above and beyond those normally experienced by family members of inadmissible aliens upon the applicant’s return to Jamaica.

The AAO also cannot find there is sufficient evidence of record to establish extreme hardship to the applicant’s spouse upon relocation to Jamaica. The applicant’s spouse contends she is very close to her family who live in Beaumont and Dallas, Texas. *Affidavit of applicant’s spouse*,

September 24, 2009. The record shows that the applicant's spouse does not live near her family in Texas, but rather has resided in Maryland since 2004 and was then transferred to New York for business. *Id.* In fact, the record shows the spouse has not lived in Texas since August of 2003. *See Form G-325A, Biographic Information, January 29, 2009.* There is no assertion or evidence of record to show the applicant's spouse would face significantly more difficulty maintaining those family relationships from Jamaica as she would while located in New York. Likewise, there remains no evidence of record to support a finding that the applicant's spouse would suffer financial difficulties upon relocation to Jamaica given her position with [REDACTED] the company's worldwide presence, and her own frequent business travel abroad.

Although the bond between the applicant and his spouse is not minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 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(i) 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(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8


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U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.