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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: AUG 13 2012

OFFICE: PHILADELPHIA

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IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Philadelphia, PA, 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 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), due to his procurement of admission to the United States using a Jamaican passport and U.S. visa issued in the name of another individual. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated June 11, 2010, the Field Office Director found that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that refusal of the applicant's admission to the United States will result in extreme hardship to the applicant's U.S. citizen spouse. Counsel states that all of the evidence submitted was not considered in the Field Office Director's decision.

In support of the waiver application, the record includes, but is not limited to legal arguments by the applicant's counsel, biographical information for the applicant and his spouse, biographical information for the children of the applicant and his spouse from prior relationships, biographical information for the applicant's spouse's granddaughter, employment information for the applicant, employment information for the applicant's spouse, deed and mortgage documentation for the applicant and his spouse, bills and account balances for the applicant and his spouse, custody and child support documentation for the applicant's son, letters of support from individuals familiar with the applicant, tax returns for the applicant and his spouse, photographs of the applicant and his family, country conditions documentation for Jamaica, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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 applicant states that he obtained admission to the on March 3, 1994 using a Jamaican passport and U.S. visitor visa issued to another individual. The applicant substituted his photo on the passport. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section states 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. In this case, the applicant's qualifying relative is his U.S. citizen spouse. Hardship to the applicant or his children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative. If extreme hardship to his qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 deportation, 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, 885 (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.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In regards to the hardship that the applicant’s spouse will suffer as a result of separation from the applicant, counsel for the applicant states that the applicant’s spouse would suffer financial and emotional hardship that amounts to extreme in the aggregate. In particular, counsel states that the applicant’s spouse is responsible for care of her 26-year-old daughter and her daughter’s six-year-old child. Additionally, counsel states that the applicant’s spouse could potentially also be responsible for the applicant’s non-custodial child. The record indicates that the applicant’s non-custodial son has been in foster care with his maternal aunt since July 14, 2005, when it appears that his mother was incarcerated. The applicant states that he was trying to obtain custody of his son, and the record supports that, but there is no indication in the record that the applicant had in fact obtained custody of his son or that custody would be placed with the applicant’s spouse in the applicant’s absence.

Moreover, counsel states that the applicant's spouse is responsible for the care of her adult daughter and her grandchild as a result of her daughter's learning disabilities. The only documentation in the record to support this claim are reports from the year 2000 and prior regarding speech and language impairments that were affecting her daughter's academic achievement. There is no indication in the record that the applicant's spouse's daughter, as an adult, requires her mother's care. There is also no documentation in the record to support the assertion that the applicant's spouse is responsible for the care of her granddaughter. The applicant and his spouse also claim to care for another child, who is unrelated to them. The only documentation in the record of this is a letter from that individual. The applicant and his spouse have also reported the individual on their tax returns as a dependent. There is no indication of that individual's age or of any formal custody arrangements. Although the applicant and his 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. *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)). 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). The AAO also notes that hardship to the applicant's children (including stepchildren) or grandchildren was not included by Congress as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. The applicant must illustrate why hardship to the children in question would cause hardship to his qualifying relative, his spouse. In this case, the applicant has not submitted supporting documentation regarding how hardship to his children would affect his spouse.

In regards to the financial hardship that the applicant's spouse would suffer in the applicant's absence, the AAO will only take into consideration the applicant's spouse's individual financial needs as the record fails to show her financial obligations in regards to other individuals. The record makes clear that the applicant has had steady employment as a mechanic since January 2001, working full-time and earning \$19.00 per hour. The applicant and his spouse state that the applicant is presently the only breadwinner in the home. The applicant's spouse states that she lost her job due to her need to care for her mother prior to her passing. She states that she is receiving unemployment compensation and relying on cobra for her health care. In support of that claim, the applicant submitted a notice dated September 30, 2009 from the Commonwealth of Pennsylvania Department of Labor and Industry Bureau of UC Benefits and Allowances, stating that the applicant's spouse would be entitled to a weekly benefit rate of \$415, but this does not appear to be a final determination of her benefits to be received. The record shows that the applicant and his spouse own a home and have a mortgage payment of \$1,463.20 per month. Clearly, the applicant's spouse's unemployment compensation would just cover the mortgage with very little left over for other expenses, as documented in the record. The applicant's spouse states that her adult daughter "works, but does not make much income." She does not state whether her

daughter would be able to contribute to the mortgage in the applicant's absence. The applicant's spouse would likely suffer financial hardship without the applicant's income; however, the record does not support her statement that her house would be foreclosed and that she would be in financial ruins. The applicant and his spouse have not addressed the possibility of selling the home and obtaining other housing that the applicant's spouse could afford without the applicant's income. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). In regards, to emotional hardship, the applicant states that his spouse is emotionally dependent on him and the applicant's spouse states that she will "seriously miss" the applicant if he is not permitted to remain in the United States. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

The applicant's spouse states that she would suffer extreme hardship if she were to relocate to Jamaica with the applicant. In particular, she states that she has no family ties in Jamaica and has only traveled outside of the United States on one occasion. She also states that she has strong family ties in the United States. The AAO recognizes that the applicant's spouse is a native of the United States and has two adult children and a granddaughter who are U.S. citizens. The record; however, as stated above, does not establish what hardship that the applicant's spouse would suffer if she were to be separated from her children and grandchild. The applicant's spouse states that she cares for her granddaughter on a day-to-day basis and that her granddaughter has a strong attachment to her. There is no documentation to support this statement in the record. Additionally, the applicant must illustrate the hardship to his qualifying relative, not the hardship to his children or grandchildren. The AAO also notes is also no evidence in the record regarding the applicant's spouse's relationships with her siblings. The AAO recognizes the importance of family ties, but the burden of proof is on the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

Additionally, the applicant states that he has not resided in Jamaica since 1994 and he is not certain that he could obtain employment there to support his family. The record does not illustrate what the applicant's income and expenses would be if he were to reside in Jamaica. Additionally, the record does not illustrate what hardship the applicant's spouse would suffer were she to relocate to Jamaica with the applicant. Although the record illustrates that the applicant and his spouse have debt in the United States, there is no indication how much equity they have in their home or their inability to repay their debt. As stated above, 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. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; and *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Jamaica, would be beyond

what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor 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.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required 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 an application for waiver of grounds of inadmissibility under sections 212(i) 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.