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

**U.S. Citizenship  
and Immigration  
Services**

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[REDACTED]

DATE: **JUN 04 2012** Office: SAN BERNARDINO, CA FILE [REDACTED]

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:

[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 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 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, San Bernardino, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 sought a benefit under the Act through fraud or willful misrepresentation of a material fact. He is the spouse of a U.S. citizen and has a U.S. citizen son and stepson. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 13, 2010.

On appeal, counsel for the applicant asserts the Field Office Director erred in finding that the record did not establish extreme hardship to the applicant's spouse and that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. He also contends that the Field Office Director failed to take into consideration a range of hardship factors. *Attachment, Form I-290B*, received June 14, 2010.

The record contains, but is not limited to, the following evidence: counsel's brief; statements from the applicant, his spouse, his son and his stepson; documentation of financial obligations; a copy of a deed of trust for the applicant's and his spouse's property; a copy of the applicant's spouse's California business license; two October 2, 2002, statements from [REDACTED] accountant; and copies of tax returns for 1999, 2000 and 2001.

The entire record was reviewed and all relevant evidence 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.
- (ii) Falsely claiming citizenship.—
  - a. In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible

The record indicates that the applicant sought admission to the United States on December 18, 1981 as a U.S. citizen, presenting his brother's New York driver's license as proof of citizenship.

While individuals making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allow aliens who made false claims to U.S. citizenship prior to September 30, 1996, to apply for waiver consideration under section 212(i) of the Act. As the applicant sought to enter the United States based on a claim to U.S. citizenship on December 18, 1981, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and may seek a waiver of his inadmissibility under section 212(i) of the Act, which states:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a 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 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel, in response to the Field Office Director's statement that the applicant's spouse would be able to work in the United States or Jamaica, states that it would be very hard for the applicant's spouse to find employment because of her age and health problems. The record, however, contains no documentary evidence to establish that the applicant's spouse suffers from any medical conditions. Further, while we note that the applicant's spouse is 63-years-old, we find the record to establish that she is currently working. The record includes a Biographic Information

(Form G-325A, dated January 29, 2010, that indicates she is self-employed in daycare and a California business license that authorizes her to run a daycare facility. No country conditions information has been submitted to establish that the applicant's spouse would be unable to continue this type of employment in Jamaica or that the applicant would be unable to obtain employment that would allow him to support her. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). No additional claims of hardship upon relocation are made by counsel. Accordingly, we find the record to contain insufficient evidence to establish that the applicant's spouse would experience extreme hardship upon relocation.

To establish that separation would result in extreme hardship for the applicant's spouse, counsel asserts that the applicant is her main support and that the economic impact of removal would be catastrophic for her in light of her age, health and current needs. He contends that the applicant's spouse is 63-years-old, her health is poor, and that she depends on the applicant for care and support, financially and emotionally. He maintains that it would be difficult for her to find employment, particularly in the current job market. Counsel further states that the applicant's son would also suffer hardship if the applicant's waiver application is denied.

The applicant in a January 12, 2003 letter, states that he and his spouse have been together for more than nine years (now 18 years) and that she has a number of medical complications and depends on him for almost everything. In a January 13, 2003 statement, the applicant's spouse maintains that she has become accustomed to the applicant's love and companionship, that he is close to her son and that the applicant's son spends the summers with them. She states that the applicant has become her life and strength, and is her soul mate.

The record also contains a January 12, 2003 statement from the applicant's son who asserts that he loves his father very much and does not know what he would do without him. In an undated statement, the applicant's stepson contends that the applicant is the closest thing he has to a real father and that the applicant has been a guiding force in his life. He further states that the applicant's advice has been invaluable with a project car he has acquired and the applicant has a heart filled with love for his mother and for him.

While the AAO notes the preceding claims made concerning the applicant's spouse's health, we do not find the record to support them. As previously indicated, no documentary evidence has been submitted to establish that the applicant's spouse suffers from any medical problem or that she is dependent on the applicant as a result. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Id.* 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)).

The record also fails to establish that the applicant's spouse is financially dependent on the applicant. As previously indicated, it reflects that the applicant's spouse currently runs a daycare business and no evidence has been submitted to demonstrate that she is dependent on the applicant's income. While the AAO notes the October 2, 2002 statements from accountant [REDACTED] that demonstrate the applicant's spouse earned gross income of \$13,860 during the period January 1, 2002 through September 20, 2002, and the applicant earned \$9,250 during essentially this same period of time, this information does not establish their financial situation on appeal. Moreover, the record contains insufficient evidence of the family's financial obligations as it provides only a car insurance billing statement for \$2,119 covering the applicant, his spouse, his stepson and a fourth individual whose relationship to the applicant is not provided by the record; and an April 25, 2010 water bill for \$252.59. Without additional evidence, we are unable to determine the financial impact of the applicant's removal on his spouse.

While the AAO acknowledges that the applicant's spouse would experience substantial emotional hardship if she is separated from the applicant, we find no evidence in the record, e.g., medical reports, psychological evaluations, statements from clergy, etc., that establishes the severity or extent of this hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.* Accordingly, based on the evidence of record, the AAO cannot conclude that the asserted hardship factors, even when considered in the aggregate, demonstrate that the applicant's spouse would suffer extreme hardship if the waiver application is denied and she remains in the United States.

The AAO notes counsel's claim that the applicant's son would suffer hardship as a result of his father's removal, but does not find the record to contain the documentary evidence necessary to support this claim. Moreover, as previously discussed, children are not qualifying relatives in section 212(i) proceedings and the record fails to demonstrate how any hardship that the applicant's son might experience as a result of separation would affect the applicant's spouse, the only qualifying relative.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would experience hardship beyond that commonly associated with removal or exclusion. Court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has not demonstrated that a qualifying relative would experience extreme hardship as a result of his inadmissibility and is, therefore, ineligible for a waiver 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.