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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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DATE: **MAR 30 2012** Office: KINGSTON, JAMAICA

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica. The matter 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 used false documents in an attempt to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. 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 March 17, 2010.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error, that the Field Office Director failed to accord proper weight to hardship impacts on the applicant's spouse and failed to consider the future impacts of the applicant's removal on the applicant's spouse. *Form I-290B*, received May 11, 2010.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant procured a false Jamaican re-entry stamp in his passport in order to conceal prior overstays in the United States, a fact discovered when he attempted to re-enter the United States on March 24, 2004. The applicant admitted in secondary inspection that he had paid an individual to back-date the stamp in his passport in order to conceal his overstays and the Field Office Director found the applicant inadmissible due to representation. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant's spouse; a psychological evaluation of the applicant's spouse from [REDACTED] dated April 18, 2010; birth certificates, military service records and photographs of the applicant's spouse's sons; copy of a Civil Action Summons for the foreclosure on a residential property in Florida; copies of wedding materials for the applicant and his spouse; a statement from [REDACTED], undated, concerning the applicant's spouse; and photographs of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

- (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, 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 asserts that the applicant’s spouse has ties to the United States and cannot relocate to Jamaica. *Brief in Support of Appeal*, received July 12, 2010. Counsel states that the applicant’s spouse has four grown children in the United States, that she would be unable to find work in Jamaica and does not have sufficient money to retire to Jamaica.

Counsel did not submit any additional evidence on appeal to support his assertions. There are no country conditions or other materials to support the assertion that the applicant’s spouse would not be able to find employment in Jamaica. There is no documentation of the applicant’s spouse’s income, savings or other financial data which supports the assertion that she could not afford to relocate to Jamaica. 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)). 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).

The record reflects that the applicant's spouse has four grown children, two of whom have served or are serving in the U.S. military. While relocation to Jamaica would result in separation from her immediate family, there is insufficient evidence to establish that this impact, even when considered in conjunction with other hardship factors related to relocation, rises above the common impacts to a degree constituting extreme hardship. The record fails to establish that, even when considered in the aggregate, the applicant's spouse would experience uncommon hardship factors rising the level of extreme hardship upon relocation to Jamaica.

Counsel for the applicant asserts that that the applicant's spouse will experience physical, emotional and financial hardship due to separation from the applicant's spouse. *Brief in Support of Appeal*, received July 12, 2010. Counsel asserts that the applicant's spouse has diabetes and hypertension and that the separation from the applicant is aggravating her medical conditions. Counsel asserts the applicant's spouse is experiencing financial hardships, that her house is in foreclosure and that the applicant would be able to work as a truck driver if he were allowed to reside in the United States. Counsel asserts that the applicant's spouse is suffering from adjustment disorder, anxiety and depression due to separation from the applicant.

The record contains a single document related to counsel's assertion that the applicant's spouse is suffering from diabetes and hypertension. As discussed by the Field Office Director, the letter from [REDACTED] states that, although the applicant's spouse suffers from hypotension (low blood pressure), hypoglycemia and diabetes, she is doing "quite fine" physically and her conditions are controlled with medications. The statement does not indicate that her medical conditions have any significant impact on her daily life or that she needs physical assistance. Based on the limited evidence in the record, the AAO does not find the record to establish that the applicant's spouse will experience any uncommon medical hardships due to the applicant's inadmissibility. Nonetheless, the AAO will give some consideration to the fact that the applicant's spouse has medical conditions.

The record also contains a statement from a Social Worker [REDACTED]. [REDACTED] states that the applicant's spouse is suffering from an Adjustment Disorder with Mixed Anxiety and Depressed Mood. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and [REDACTED]. There is no other evidence in the record indicating the applicant's spouse is receiving any routine professional treatment or specialized care, or that she has an ongoing relationship between a mental health professional or any history of treatment for the generalized anxiety disorder from which she claims to suffer. The report does not provide any basis upon which to distinguish the emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to the financial impact on the applicant's spouse, the record contains two filings from the 19th Judicial Circuit of Florida indicating that a residential property occupied by the applicant's spouse has been put into foreclosure. The record does not contain any documentation of the applicant's spouse's income, such as pay stubs, tax returns or other documents. Nor is there any

explanation why the applicant's spouse's four grown children cannot provide some support to their mother. The record does not indicate that the applicant has ever resided with or provided financial support for his spouse, thus it is unclear how the applicant's spouse's situation would change if the applicant were to reside in the United States. Based on these observations the AAO does not find the record to establish that the applicant's spouse will experience any uncommon financial impact upon separation.

When the hardship factors upon separation are examined in the aggregate, there is insufficient evidence to establish that the degree of any hardships experienced by the applicant's spouse are of such a degree of severity that they constitute extreme hardship. The AAO does not find the record to establish that the applicant's spouse will experience extreme hardship upon separation.

The AAO recognizes that the applicant's spouse may experience some physical and financial challenges as a result of separation from her spouse. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. 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. 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.