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



U.S. Citizenship
and Immigration
Services

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H6

FILE:

Office: KINGSTON, JAMAICA

Date:

MAY 04 2010

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i)

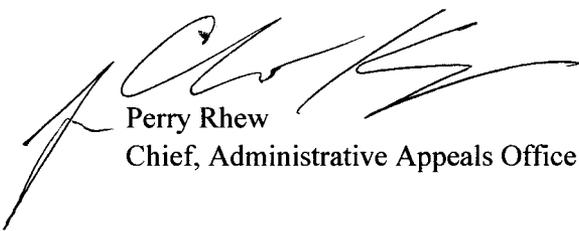
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer in Charge, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 45-year-old native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured admission to the United States through fraud or misrepresentation. The applicant is married to a citizen of the United States, and she seeks waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i), in order to reside with her husband in the United States.

The Officer in Charge found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Officer in Charge*, dated Nov. 22, 2006. On appeal, the applicant's spouse contends that he is suffering extreme hardship as a result of the denial of the waiver. *See Form I-290B, Notice of Appeal; Letter in Support of Appeal.*

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they married on April 15, 1999; several letters from the applicant's husband; a letter from the applicant; financial and tax records; family photographs; letters in support of the couple; and documentation relating to the applicant's husband's claim for Disability Insurance Benefits and Supplemental Security Income. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) of the Act provides in pertinent part:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

.....
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....
(v) Waiver

The [Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C)(i) of the Act provides:

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 shows that the applicant admitted entering the United States on or around September 15, 1995, with false documents. On May 17, 2001, the applicant's husband filed a Petition for Alien Relative (Form I-130) on her behalf, and the applicant filed an Application to Adjust Status (Form I-485). On October 8, 2003, the former Immigration & Naturalization Service denied the relative visa petition. On January 5, 2004, U.S. Citizenship and Immigration Services (USCIS) denied the adjustment application and placed the applicant in removal proceedings. On August 16, 2004, an immigration judge granted the applicant voluntary departure until December 14, 2004, and the applicant timely departed. The applicant's spouse filed a second relative visa petition on behalf of the applicant, which USCIS approved on September 1, 2004.

The applicant accrued unlawful presence in the United States during the period from April 1, 1997, the effective date of the unlawful presence ground of inadmissibility, to May 16, 2001, when she did not have a properly filed pending application for adjustment of status. The applicant's unlawful presence for one year or more and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). The applicant's use of false documents to gain admission into the United States renders her inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts, or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

In order to obtain a hardship waiver under sections 212(a)(9)(B)(v) or 212(i) of the Act, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-*

Gonzalez, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED], is a 48-year-old native and citizen of the United States. The applicant and her husband have been married for 12 years. [REDACTED] asserts that he is suffering physical, mental, and spiritual hardships as a result of the denial of the waiver. *See Letter from* [REDACTED]

In support of the hardship claim, [REDACTED] states that the applicant “is [his] rock,” and that “she has always been very supportive, even when [he] was at [his] lowest.” *Notarized Letter from* [REDACTED] He finds the separation to be unbearable, and requests compassion for his family as they

“are getting older and [they] can not do this alone.” *Id.* The record reflects that [REDACTED] has had a substance abuse problem. *Id.*; see also *Letter from [REDACTED]* dated Sep. 15, 2003. [REDACTED] also claims that the couple suffered after the miscarriage of their child. See *Notarized Letter from [REDACTED]*

The record indicates that [REDACTED] suffers from a congenital skin abnormality, which has rendered him disabled and unable to engage in any substantial gainful activity since December 17, 2000. *Decision of the Social Security Administration, Office of Hearings and Appeals*, dated July 19, 2002; see also *Form I-864, Affidavit of Support* (indicating that [REDACTED] has been unemployed since 2000). [REDACTED] states that he receives disability insurance, but has difficulty making ends meet, and was almost evicted from his house. See *Notarized Letter from [REDACTED]*. [REDACTED] indicates that he has been to Jamaica twice to see the applicant, but that he cannot afford to travel there on his disability payments. The financial documents in the record show that the couple had monthly expenses in the amount of \$800 in 2002. See *Financial Documents*. The record does not indicate how much [REDACTED] receives in disability payments. While in the United States, the applicant earned \$910 per week as a home care worker. See *Employer Letter*, dated Feb. 6, 2003.

Here, the evidence in the record does not show that the denial of the waiver has caused extreme hardship to the applicant’s husband. While the difficulties of separation are apparent from [REDACTED] letters, the applicant did not provide probative testimony, medical records, or other evidence to show that the mental and spiritual hardships faced by [REDACTED] are unusual or beyond what would be expected upon family separation due to one member’s inadmissibility. Additionally, the applicant did not provide any evidence that [REDACTED] is unable to care for himself as a result of his disabilities or his age. The AAO notes that [REDACTED] disability has impacted his ability to work, and that the applicant was the primary income provider prior to her departure from the United States. However, without evidence of [REDACTED] income from disability insurance and any other sources, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. See *Hassan*, 927 F.2d at 468. Finally, the record contains no evidence, such as detailed testimony or documentation regarding conditions in Jamaica, to support a claim that relocation to Jamaica would cause extreme hardship to [REDACTED]. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66 (setting forth relevant factors, including the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate). In fact, [REDACTED] has not raised the possibility of relocation to Jamaica to ease the difficulties of separation.

In sum, although the applicant’s spouse claims hardships based on the denial of the waiver, the record does not support a finding that the difficulties, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one’s

family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.