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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 18 2003

FILE: [redacted] Office: CHERRY HILL, NJ DATE:

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:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cherry Hill, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 38-year old native and citizen of Jamaica who made a material and willful misrepresentation and submitted fraudulent documents at the time of her entry into the United States in August 1999. The applicant is married to a U.S. citizen and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of the grounds of inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The district director noted that the applicant claimed she fled Jamaica to avoid her abusive spouse, but failed to provide supporting evidence. The district director further noted that the applicant seeks a waiver of excludability based upon the hardship she believes would result to her United States citizen spouse if she had to depart the United States. After reviewing the evidence, the district director concluded that the applicant's departure from the United States would cause the "usual rather than extreme hardship." The waiver application was denied accordingly.

The district director notified the applicant of her intent to deny the waiver application and provided her with an opportunity to submit additional evidence. The petitioner submitted additional evidence in the form of an affidavit written by the applicant's spouse outlining the hardship he would suffer if his wife were to leave the United States. He asserted that if he relocated to Jamaica, he would be unable to support his children from a prior marriage and that his medical condition would deteriorate. The applicant submitted a note ostensibly written by a physician stating that the applicant's husband is being treated for hypertension and a seizure disorder. Counsel for the petitioner submitted handwritten letters from the applicant describing her ordeal while in Jamaica in the hands of her abusive husband (now deceased); from the applicant's daughter corroborating her mother's story; and from the applicant's spouse reiterating his claim that the applicant's departure would cause him extreme hardship. Counsel also submitted a letter from the applicant's pastor stating that the applicant is "a kind and loving woman."

The applicant's spouse wrote that:

> It would devastate me to have to deal with coming home (1) to an empty house (2) not being greeted by a child who is relearning family (3) being taught values. Should my wife and stepdaughter be

> deported from the United States I'll be force[d] to go with them, then I'll be unable to support them probably also as stated in the decree from my previous marriage I will not be able to visit my biological children or to keep up with my child support. I also have a medical condition which require me at times requiring immediate medical attention and various testing bearing the availability of medication.

(Sic.) 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.

Section 212(i) of the Act provides that:

> (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 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (the BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her U.S. citizen husband.

To support the assertions regarding the qualifying relative's physical condition, counsel submitted one printed note from a doctor. The note does not indicate in any way that the applicant's spouse suffers from a life-threatening condition or that he needs a caretaker.

The applicant asserted that it would impose a hardship upon her United States citizen husband should he accompany her to reside in Jamaica. The applicant's spouse stated that, "should my wife and step-daughter be deported from the United States, I'll be forced to go with them, then I'll be unable to support them." There are no laws that require a United States citizen to leave the United States and live abroad. The applicant's husband will not be forced to go to the applicant's native country to live. In *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970), *cert. denied,* 402 U.S. 983 (1971), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court stated further that the common results of deportation are insufficient to prove extreme hardship. In *Matter of Pilch,* Interim Decision 3298, (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

It is noted that the applicant's minor daughter also filed a Form I-601 for a waiver of excludability. The applicant's daughter was nine years old at the time of her entry into the United States. Any fraud employed on her behalf is attributable to her mother; hence, she is not required to file an application for a waiver of excludability.

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

ORDER: The appeal is dismissed.