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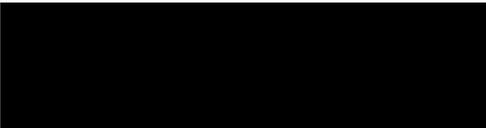
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IN RE: Applicant: 

NOV 03 2005

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:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated February 24, 2004.

On appeal, counsel for the applicant contends that the district director abused his discretion in denying the application, as he did not give equal weight to all relevant facts. *Statement on Form I-290B*. Counsel further asserts that the district director made erroneous conclusions regarding the applicant's employment, and the significance of his financial contribution to his family. *Id.* Counsel provides that, should the applicant be prohibited from remaining in the United States, the applicant's spouse will suffer economic and emotional hardship. *Brief in Support of Appeal* at 3-5.

The record contains a brief from counsel; a letter from the applicant's employer; a letter from the former employer of the applicant's wife; a report from a licensed psychologist assessing the mental health of the applicant's wife and children; information on current conditions in Guyana; a statement from the applicant's wife in support of the Form I-601 application; tax and financial documents for the applicant's family; the applicant's marriage certificate; the naturalization certificate for the applicant's wife, and; documentation regarding the applicant's immigration history. The entire record was reviewed and 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.

Section 212(i) of the Act provides 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.

The record reflects that on August 8, 1996 the applicant attempted to enter the United States at Miami, Florida. He presented a passport belonging to another individual, yet his photograph and biographical data had been substituted for that of the true owner. Thus, the applicant made a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems 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.

On appeal, counsel provides that, should the applicant be prohibited from remaining in the United States, the applicant's wife will suffer economic and emotional hardship. *Brief in Support of Appeal* at 3-5. Counsel provides that the applicant's wife, son, and two stepchildren are all U.S. citizens. *Id.* at 1. Counsel asserts that the district director made erroneous conclusions regarding the applicant's employment, and the significance of his financial contribution to his family. *Id.* Counsel states that the applicant is currently employed, and he is the sole provider for his family. *Id.* Counsel contends that the district director erroneously determined that the applicant is not employed and provides no economic support for his family, based on the fact that the applicant was not employed in 2001 as indicated on his Form G-325A. *Id.* at 2. Counsel indicates that the applicant's spouse suffers from severe depression and is unable to work, thus she is dependant on the applicant for financial support. *Id.* at 2-3.

Counsel explains that the applicant's wife has strong ties to the United States with her parents and three children in the country, and she has been a U.S. citizen since July 23, 1996. *Id.* at 4. Counsel states that the applicant's wife receives significant support from her parents, and that her mother takes care of her children. *Id.* Counsel indicated that it would be difficult for the applicant's wife to relocate to Guyana, yet she may be forced to do so to preserve family unity. *Id.* Counsel stated that, due to her illness, it would be difficult for the applicant's wife to find employment in Guyana. *Id.* at 5. Counsel asserts that the applicant's wife would be unable to obtain adequate health care for her condition in Guyana. *Id.*

In an evaluation from a licensed psychologist, [REDACTED], he observed that the applicant's wife displayed the symptoms of a major depressive disorder. *Report from [REDACTED]* dated September 8, 2003. [REDACTED] explained that the applicant's spouse lost her first husband to cancer, and that she is

experiencing significant emotional difficulty as a result of the applicant's immigration problems. *Id.* at 2. [REDACTED] noted that the applicant's wife worked as a cashier earning a modest income, and that her mother serves as a full-time caregiver for her children. *Id.* [REDACTED] observed that the applicant's spouse draws much support from her parents, with whom she resides. *Id.* [REDACTED] noted that the applicant's wife expressed that she would be unable to return to Guyana with the applicant. *Id.* at 3.

Counsel contends that the district director abused his discretion in denying the application, as he did not give equal weight to all relevant facts. *Statement on Form I-290B.*

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. Counsel indicates that the applicant's wife will endure significant financial hardship if the applicant is compelled to depart the United States, as she is unable to work due to her mental health. However, the record contains evidence that the applicant has worked on a full-time basis as recently as July 2003. *Letter from Former Employer of Applicant's Wife*, dated August 14, 2003. While the applicant submits an evaluation of his wife's mental health, the evaluation makes no reference to his wife's ability to work. While the applicant submitted a letter from his wife's former employer that states that she discontinued employment on July 6, 2003, the applicant has provided no documentation to show that his spouse has not assumed employment with a new employer, such as 2003 tax documentation or other probative evidence. 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)).

It is further noted that the applicant's wife resides with her parents, and she receives full-time childcare from her mother. Thus, it is evident that the applicant's wife would not incur childcare expenses in the applicant's absence. The applicant has failed to identify who pays for common household expenses such as food, utilities, rent, or mortgage installments, or whether the home is owned by the applicant, his wife, or his wife's parents. Accordingly, the AAO cannot assess whether the applicant's wife receives significant financial support from her parents, and if so, what level of support. Therefore, the applicant has not shown that his wife is dependent on him for economic support, such that she will experience extreme hardship if he is compelled to depart the United States.

Counsel contends that the applicant's spouse will experience significant emotional hardship if she is separated from the applicant, and that she is currently suffering from severe depression. As discussed above, the applicant submits an evaluation from a licensed psychologist that discusses his wife's mental health. However, the single evaluation is of limited use, as it was conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that his wife received or required follow-up evaluation or treatment from a mental health professional. Again, 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. at 165. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's wife, it does not show that, should the applicant depart the United States, his spouse will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a

result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The record reflects that the applicant's wife intends to remain in the United States if the applicant relocates to Guyana. However, it is noted that the applicant's wife is also a native of Guyana, and she is free to return there with the applicant. The record suggests that she resided there from 1970 until 1991, thus she would not be subject to hardships that are associated with adapting to a new culture or language. Accordingly, the applicant's wife is not required to endure the hardship of separation from the applicant as a result of denial of the waiver application.

Counsel provides that conditions in Guyana are poor. The AAO acknowledges that Guyana poses substantial lifestyle changes should the applicant's wife relocate there. However, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's children, as U.S. citizens, are also free to remain in the United States, and thus the applicant's wife is not compelled to suffer the emotional hardship of having her children relocate to Guyana.

The report from [REDACTED] references hardships to the applicant's child and stepchildren. However, hardship experienced by the applicant's children is not probative of the applicant's eligibility for a waiver. Section 212(i)(1).

Finally, counsel's contention that the district director abused his discretion in denying the application is without merit. The district director conducted a thorough review of the relevant law, the applicant's immigration history, and the evidence of record. The district director provided clear reasoning for his decision, and all pertinent factors were given due consideration.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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 application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.