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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEWARK, NJ

Date: NOV 03 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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, Chief
Administrative Appeals Office

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

The applicant [REDACTED] Mr. [REDACTED] is a native and citizen of Haiti who entered the United States in 1995, using a fake passport and applied for adjustment of status on March 14, 2001. The applicant was found to be inadmissible 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 admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with his U.S. citizen (USC) spouse, [REDACTED] Ms. [REDACTED], the applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record reflects that Mr. [REDACTED] used a fraudulent passport for entry into the United States in 1995. As a result of this misrepresentation, the District Director found the applicant to be inadmissible to the United States. *District Director's Decision*, dated December 27, 2004. The District Director also found 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 Inadmissibility (Form I-601). *Id.*

On appeal counsel submits a brief and additional documentation. The record consists of the following documents: a short hardship statement from Ms. [REDACTED] the U.S. State Department's Country Report on Human Rights Practices in Haiti from 2002; and tax records from 2002 and 2003. The AAO reviewed the record in its entirety before reaching its 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, *supra* at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant

has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel asserts that Ms. [REDACTED] will experience extreme hardship if Mr. [REDACTED] is compelled to return to Haiti. *Brief at 16*. While existing and political and economic conditions in Haiti are considerations in determining extreme hardship, counsel submitted one report regarding conditions in Haiti but did not explain how these conditions would affect Ms. [REDACTED] specifically if she relocated to Haiti with her husband or if she remained in the United States without him.

Counsel asserts that denial of Mr. [REDACTED] waiver application would result in extreme hardship to his wife because she is originally from Venezuela and has no ties to Haiti. Counsel has not explained or documented why the couple could not go live in Venezuela, Ms. [REDACTED] native country, where she presumably has the family ties she does not have in Haiti. In addition, Ms. [REDACTED] Form G-325A Biographic Information indicates that her mother was born in Haiti, so she is not entirely without ties to Haiti.

Counsel asserts that if Mr. [REDACTED] went to live in Haiti and Ms. [REDACTED] remained in the United States without him, this would effectively end their marriage because it would be impossible to maintain their marriage. Counsel, however, submitted no documentation to support this assertion, whether to document the cost of airfare and the length of a flight from Haiti to Newark, or the psychological, financial, or emotional hardship Ms. [REDACTED] would suffer if her husband's relocated to Haiti without her.

Other than a brief statement from the applicant's wife, in which she notes her love for and attachment to her husband, (*See Ms. [REDACTED] hardship statement*), no objective evidence was submitted to supplement Ms. [REDACTED] claim of extreme emotional hardship. Although his wife might suffer emotionally, if he returned to Haiti and she remained here the couple faces the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on Ms. [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility

typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Ms. [REDACTED] faces extreme hardship if Mr. [REDACTED] is refused admission and she chooses to remain in the United States. 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that Mr. [REDACTED] deportation would cause to his spouse and children). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS*, *supra*, at 468.

In this case, although the applicant's qualifying relative might endure emotional hardship if she remains in the United States separated from the applicant, or if she joins him in Haiti or Venezuela and is separated from her family and friends in the United States, their situation, based on the very limited documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.