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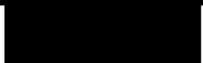
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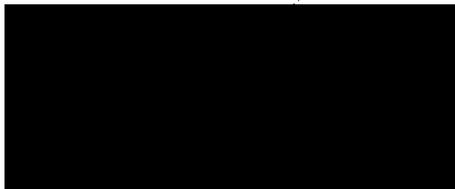
Applicant:



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:

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

The applicant [REDACTED] is a native and citizen of Haiti 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 admission 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), based on his qualifying relative, his U.S. citizen wife [REDACTED]. The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and accordingly denied the waiver request. *Decision of the District Director*, dated August 9, 2004.

On appeal, counsel makes the following assertions. The applicant entered the United States at Miami International Airport on or about October 1988. He was carrying a photo-switched passport. The applicant advised the custom inspectors of his true name prior to presenting the passport. He then informed the inspectors that he was seeking political asylum and carrying a photo-switched passport. He advised the inspectors of his true identity prior to presenting the passport. He was taken to Krome Detention Center in Miami, Florida, from where he was paroled in February 1989. On October 27, 1992, the Board of Immigration Appeals (BIA) sustained the decision to exclude the applicant from the United States. On February 1991, the applicant married [REDACTED], they separated in August 2000. He reconciled with her and is now living with her and his son, [REDACTED] who was born on [REDACTED] in the United States. The biological mother of [REDACTED] is [REDACTED]. As the applicant does not know of her whereabouts, he is the sole custodial parent of [REDACTED]. On March 11, 2000, the applicant applied for adjustment of status pursuant to section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The applicant, in response to a request for additional evidence, submitted Form I-601 to apply for a waiver under section 212(i) of the Act. The applicant used his son as the qualifying relative, when his spouse should have been the qualifying relative, though they were separated at the time. The Form I-601 and adjustment of status were denied and a timely appeal was filed. *Applicant's Brief on Appeal*.

On appeal, counsel states that 8 C.F.R. § 245.15(g)(3) gives sole jurisdiction to the Department of Homeland Security (DHS) over the HRIFA applications of Haitians who are subject to a final order of exclusion. Counsel contends that the applicant's affidavit, which accompanied the Form I-601, indicates that the actions that he performed upon arriving at the Miami International Airport do not constitute fraud upon the United States. "The applicant clearly averred that he had identified himself prior to presenting the photo-switched passport to the customs officer," counsel asserts. Counsel cites to *Matter of Y-G-*, 20 I&N Dec. 794, 795 (BIA 1994) to show that the BIA found no fraud in a fact pattern similar to the one presented here. Counsel states that the BIA has stated that "fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found." Counsel states that the DHS has authority to revisit the initial issue of fraud; that the HRIFA regulations at 8 C.F.R. § 245.15(d)(2) indicate that leniency should be used with individuals accused of document fraud, given the difficulties in leaving Haiti and the lawlessness of the country; and that the regulation modifies *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), which indicates that the underlying document fraud could be considered as an adverse factor in deciding whether to grant a 212(i) waiver.

Counsel states that the applicant has reconciled with his spouse and is submitting an amended Form I-601 application, which shows extreme hardship to his wife. Counsel further states that there is no provision in

8 C.F.R. § 245.15 prohibiting an amendment to the Form I-601. According to counsel, 8 C.F.R. § 245.15(d)(3) indicates that the discretionary factors in granting a 212(i) waiver are to be weighed with leniency. Counsel contends that extreme hardship should not be weighed with the same rigor as in decisions such as *Matter of Anderson*, 20 I&N Dec. 888 (BIA 1994) and its progeny. Counsel states that HRIFA is an ameliorative provision, and 8 C.F.R. § 245.15(d)(3) indicates the intent to soften the effects of document fraud on HRIFA applicants. Counsel states that although there is precedent interpreting the term “extreme hardship” for purposes of suspension of deportation and 212(i), there are no precedential decisions interpreting 8 C.F.R. § 245.15(d)(3). Counsel maintains that although *Matter of Anderson, supra*, and *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) may provide guidance, neither is squarely on point since 8 C.F.R. § 245.15(d)(3) has amended the balancing of equities for determining extreme hardship. Counsel indicates that the BIA has not consistently applied the stringent criteria to waivers that it applies to suspension cases; it has shown leniency in reversing 212(h) waiver denials in *Matter of Millard*, 11 I&N Dec. 175 (BIA 1965) and *Matter of B*, 11 I&N Dec. 560 (BIA 1966). *Applicant’s Brief on Appeal*.

In this proceeding, the AAO will first address counsel’s assertion that the director erred in finding the applicant inadmissible under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

Counsel contends that the applicant is not inadmissible for seeking admission into the United States by fraud or willful misrepresentation as he advised the custom inspectors of his true name prior to presenting the photo-switched passport and informed the inspectors that he was seeking political asylum and was carrying a photo-switched passport. Counsel states that no fraud was found in *Matter of Y-G-*, *supra*, a factual situation similar to the one presented here. According to counsel, to find excludability under section 212(a)(6)(C)(i) of the Act the fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States government.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.

The record contains two affidavits subscribed and sworn by the applicant. The affidavit subscribed and sworn on July 2, 2004 indicates that the applicant entered the United States at Miami International Airport in

October 1988. He states that "at the airport I stated that I was seeking political asylum within the United States because I believed I was fleeing persecution in Haiti" and that "while at the Miami airport I admitted to the U.S. Immigration officer that my travel documents were not mine, and I advised them of my true identity and applied for political asylum." *Affidavit of Applicant, subscribed and sworn July 2, 2004.*

The affidavit subscribed and sworn on November 9, 2004 states that the applicant was carrying a photo-switched passport. "That while at the Miami airport, I informed the U.S. Immigration officer that my travel documents were not mine, and I advised him of my true identity prior to presenting the passport." He states that "I further stated that I was seeking political asylum within the United States because I believed that I was fleeing persecution in Haiti." *Affidavit of Applicant, subscribed and sworn November 9, 2004.*

The record contains a document entitled "Memorandum," dated October 25, 1988, which pertains to the applicant and indicates the following.

The above mention[ed] subject presented an altered Haitian passport [redacted] with his photograph affixed to it. It has been established that the document has been altered, based on the following evidence:

...

Subject arrived [at the Miami International Airport], 10-25-88, PA 434. Subject was sent to Secondary for questioning. Subject admitted passport was not his, but his deceased roommate's. Subject paid a man, whose name was unknown to him, \$500 to place his photo in passport. Subject admitted he was coming here to look for employment.

The record contains a document, Form I-110, which states that the applicant sought to enter the United States by fraud, or by willfully misrepresenting a material fact, by presenting of a photo-switched Haitian passport. *Form I-110.*

The "Record of Sworn Statement – Witness" is contained in the record. In answer to the question "What was the purpose of your trip here today?" the applicant states: "My real intention was to come here and work." *Record of Sworn Statement – Witness, page 2.* In answer to the question "How did you come to purchase this passport in the name of [redacted]" the applicant states: "I didn't really purchase it. It belonged to my roommate, I believe he came to the U.S. twice. My roommate had "AIDS" and passed away. I seized the opportunity to get the passport and come to the United States." *Id.* at page 2. The applicant was asked whether he wished to go before an immigration judge. In response, he stated "I want to go to Haiti, I changed my mind, I want to see the Judge." *Id.* at page 3. *Record of Sworn Statement, Form I-263A, subscribed and sworn on October 25, 1988.*

The record contains the transcript of the immigration judge's decision relating to the applicant's exclusion proceedings (he is charged with seeking to enter the United States by fraud or by willfully misrepresenting a material fact, and no valid immigrant visa, and is applying for asylum and withholding of deportation). The judge states that there are "certain significant inconsistencies between the applicant's testimony and the written I-589 application." Specifically, the immigration judge stated that in oral testimony the applicant testified that he did not know the identity of the person whose passport was given to him in the Port Au Prince Airport, and which he presented to the immigration officer upon his arrival in Miami. The immigration judge

stated that in answer to question 26 on the Form I-589, the applicant stated that "I did not obtain a U.S. visa. Like I explained it, a friend of mine died. We were roommates, and I used his passport to facilitate my escaping from my political problems." *Transcript of the Oral Decision of the Immigration Judge, dated February 10, 1989, pages 9-10.* The immigration judge noted that in his oral testimony the applicant stated that he did not have a roommate, that he, in fact, resided at all times with his father in his father's home, except for the brief period of time when he was with a girlfriend in Saint Mark. *Id.* at page 9.

The AAO notes that the Record of Sworn Statement does not support the claim that the applicant affirmatively stated to the immigration officer that he sought political asylum. Nor does it support the claim that the applicant advised the immigration officer of his true identify prior to presenting the passport. Furthermore, the AAO notes that the immigration judge's decision pointed out inconsistencies in the applicant's oral testimony and his written I-589 application regarding the passport obtained by the applicant. Finally, it is noted that the assertions in the applicant's affidavits are inconsistent. The November 9, 2004 affidavit conveys that the applicant advised the immigration officer of his true identify prior to presenting the passport. However, in the July 2, 2004 affidavit the applicant does not allege that he affirmatively advised the immigration officer of his true identify prior to presenting the passport. In both affidavits the applicant alleges that he gave his true identify and affirmatively requested political asylum in the United States. The Record of Sworn Statement, which was taken during Secondary Inspection at the airport, does not corroborate this. Rather, it discloses that the applicant did not immediately request political asylum after the immigration officer learned of his true identity.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO notes that the record contains no evidence that explains or reconciles the described inconsistencies.

Counsel claims that the facts in *Matter of Y-G-* are similar to those in the instant case. The issue addressed in *Matter of Y-G-* was the excludability of the applicant for fraud or willful misrepresentation of a material fact in seeking to procure entry into the United States. *Id.* at 796. The facts in *Matter of Y-G-* are as follows:

[The applicant] arrived in the United States on December 3, 1990, aboard a flight from Haiti. He boarded the flight by using a fraudulent, photo-switched passport. At a hearing on January 17, 1991, the applicant answered in the affirmative when asked by the immigration judge whether he presented a Haitian passport and temporary resident card under the name of [REDACTED] upon his arrival in the United States on December 3, 1990. He further stated that [REDACTED] is not his true name and that he does not have a visa under his true name to allow him to enter the United States legally. At his March 13, 1991, hearing on the merits of his asylum application, the applicant volunteered, "Well, I have to tell you that when I came here in the States, the first thing I did was not lying. I gave my real name, and I claimed that the documents that I have they were not good, and I gave the address, my family would help me here."

In finding that the evidence did not establish the applicant as excludable under section 212(a)(6)(C)(i) of the Act, as an alien who seeks or has sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact, the BIA stated:

The record in the case before us contains a Form I-110 signed by an immigration inspector, which states that the applicant applied for admission as a temporary resident and that he made an admission against interest "by stating his true name is [REDACTED] and that the documents he presented as his own were in fact obtained illegally and made to fit his likeness in an effort to defraud the U.S. government." The immigration inspector did not testify at the applicant's exclusion proceedings. The applicant conceded that he possessed a Haitian passport and a temporary resident card bearing the name of [REDACTED]. However, the applicant testified that when he came to the United States, he did not lie, but instead gave his real name, stated that the documents he possessed were not his own, and gave the address of family members who would help him.

*Id.* at 797.

The AAO finds the facts in the present case distinguishable from *Matter of Y-G-*. In *Matter of Y-G-*, the alien testified that when he came to the United States, he did not lie, but instead gave his real name, and stated that the documents he possessed were not his own. With the instant case, the applicant presented the altered Haitian passport to an immigration officer for admission into the United States, was sent to Secondary Inspection for questioning about the passport, and only then admitted the passport was not his. Thus, he admitted the passport was not his when his attempt to enter the United States using the passport was foiled by the immigration inspector who detected the passport had been altered.

In *Matter of D-L- & A-M-*, 20 I. & N. Dec. 409, 412 (BIA 1991), the BIA held that outside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent Spanish passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to United States immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act: it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413.

Here, however, the applicant, upon arrival in Miami, did not surrender the false passport to United States immigration officials and immediately reveal his true identity and ask to apply for asylum. The record reveals that the applicant presented the photo-switched passport to the immigration officer for admission into the United States, was sent to Secondary Inspection for questioning about the passport, and only then admitted the passport was not his. He did not immediately ask to apply for asylum, although he alleges this in the affidavits.

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the seventh circuit court of appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that "[a]n individual

who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact.” *Id.* at n.1.

Accordingly, there is substantial evidence to support the finding of the applicant as excludable under section 212(a)(6)(C)(i) of the Act as an alien who seeks or has sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact. He presented to immigration officials in Miami a passport not his own to gain admission to the United States. Thus, he engaged in willful fraud and misrepresentation of material fact.

The AAO will now consider counsel’s assertion that the applicant qualifies for a section 212(i) waiver of inadmissibility.

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 applicant seeks a waiver of inadmissibility.<sup>1</sup> 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 to the applicant or to her child is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is 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).

Counsel states that although there is precedent interpreting the term “extreme hardship” for purposes of suspension of deportation and 212(i), there are no precedential decisions interpreting 8 C.F.R. § 245.15(d)(3). Counsel maintains that although *Matter of Anderson, supra*, and *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) may provide guidance, neither is squarely on point since 8 C.F.R. § 245.15(d)(3) has amended the balancing of equities for determining extreme hardship. Counsel that the HRIFA regulations at 8 C.F.R. § 245.15(d)(2) indicate that leniency should be used with individuals accused of document fraud, given the difficulties in leaving Haiti and the lawlessness of the country. However, the regulation cited by counsel, 8 C.F.R. §

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<sup>1</sup> It is noted that certain grounds of inadmissibility are waived under the HRIFA for adjustment of status; however, inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the provision under which the applicant is deemed inadmissibility, is not one of the provisions waived. See 8 C.F.R. § 245.15(e).

245.15(d)(2) and (3), relate to eligibility of dependents of a principal HRIFA beneficiary.<sup>2</sup> Because Mr. [REDACTED] is not a dependent of a principal HRIFA beneficiary, this regulation is not applicable here.

The regulation at 8 C.F.R. § 245.15(e), applicability of grounds of inadmissibility contained in section 212(a), relates to weighing of discretionary facts and taking into consideration of the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure. This regulation reads as follows:

- (1) Certain grounds of inadmissibility inapplicable to HRIFA applicants, Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.
- (2) Availability of individual waivers. If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with Sec. 212.7 of this chapter. . . . In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

The AAO notes that the regulation is clear that Haiti had widespread general lawlessness and corruption at the time of [REDACTED] departure from Haiti. However, the inducement of [REDACTED] to commit fraud or make willful misrepresentations was his determination to obtain work in the United States, as declared by the

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<sup>2</sup> The regulation at 8 C.F.R. § 245.15(d), which includes (2) and (3), the parts cited by counsel, states:

A Haitian national who is the spouse, child, or unmarried son or daughter of a principal beneficiary eligible for adjustment of status under the provisions of HRIFA is eligible to apply for benefits as a dependent, if the dependent alien meets the following requirements:

- (1) Physical presence. The alien is physically present in the United States at the time the application is filed;
- (2) Proper application. The alien properly files an application for adjustment of status as a dependent in accordance with this section, including the evidence described in paragraphs (h) and (l) of this section.
- (3) Admissibility. The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section;

applicant in the Record of Sworn Statement. Although the applicant applied for asylum, the immigration judge found *significant inconsistencies* in his oral testimony and the written I-589 application regarding the passport which the applicant presented to the immigration officer upon his arrival in Miami. Even without the inconsistencies, the immigration judge found that no one was, in any manner, attempting to harm the applicant. It is noted that the BIA upheld the immigration judge's decision. Thus, the AAO finds that in light of the evidence in the record, the applicant did not have a sufficiently valid inducement to commit fraud or make willful misrepresentations in order to gain admission to the United States.

Counsel claims that the regulation at 8 C.F.R. § 245.15(d)(3) has amended the balancing of equities, in determining extreme hardship, that is set forth in *Matter of Anderson, supra*, and *Matter of Ige, supra*.<sup>3</sup>

Counsel misconstrues the language at 8 C.F.R. § 245.15(d)(3). Under 212(i), a balancing of the negative and positive factors is only done after the statutory requirement of extreme hardship to a qualifying relative has been established. Balancing of negative and positive factors relates to discretion; it has no connection to the finding of extreme hardship.

The AAO finds that "extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." See *Matter of Cervantes-Gonzalez, supra*, at 564. In *Matter of Cervantes-Gonzalez* the BIA lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act.<sup>4</sup> 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 BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the applicant's wife. Extreme hardship to the applicant's wife must be

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<sup>3</sup> The AAO has already established that the regulation at 8 C.F.R. § 245.15(d)(3) relates to eligibility of dependents of a principal HRIFA beneficiary, and therefore is not applicable here.

<sup>4</sup> Counsel's reference to 212(h) waivers in *Matter of Millard*, 11 I&N Dec. 175 (BIA 1965) and *Matter of B*, 11 I&N Dec. 560 (BIA 1966) is not persuasive as the instant case involves a 212(i) waiver, which is the waiver specifically addressed in *Matter of Cervantes-Gonzalez*.

established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

states that he married the applicant on February 4, 1991, separated from her in August of 2000, and has since reconciled and has a close and loving relationship with her. states that while he was separated he had a relationship with and that they resided together, and on April 22, 2002, she gave birth to his son, . asserts that ever since absconded from Illinois in December 2003 he has been the primary care provider of . He states that he provides for physical and emotional needs, as well as his health insurance benefits. states that it would be an extreme hardship to his wife and son if they returned with him to Haiti and were subjected to extreme poverty and a violent environment where kidnappings and murders are common every day occurrences. He states that if his son did not join him in Haiti, he would have to stay with his wife and it would be a tremendous economical and emotional hardship for her to have to take care of his son alone. *Affidavit of Applicant, subscribed and sworn November 9, 2004.*

The applicant's wife states that she resides with the applicant and they have a good and loving relationship. She states that although they had separated in August of 2000, they continued to maintain a close relationship. She states that they recently reconciled and that she helps to care for her husband's son. states that it would be an extreme hardship to her if her husband is forced to return to Haiti or if she joined her husband in Haiti and were subjected to extreme poverty and a violent environment where kidnappings and murders are common every day occurrences. She states that if she remained in the United States without the applicant, she would be the only person could stay with, and it would be a tremendous economical and emotional hardship to care him alone because she has a very reduced income and no relatives to help with child care while she worked. *Affidavit of Paule Thales, subscribed and sworn November 10, 2004.*

The AAO finds that the applicant has not established that his spouse would endure extreme hardship if she and joined him in Haiti. The submitted U.S. Department of State report on Haiti indicates that the country's human rights record is poor. However, the applicant did not furnish evidence that demonstrates that he has been or will be specifically targeted as a victim of violence by a particular group or person. The record contains the documents pertaining to the applicant's application for asylum and withholding of deportation. It is noted that the immigration judge denied the applicants application for asylum and withholding of deportation, and his decision was upheld by the BIA. The record also shows that the applicant has a son, born March 19, 1987, living in Port-au-Prince, Haiti. *Form I-589.*

The applicant asserts that his wife would be subjected to extreme poverty in Haiti. This argument is foreclosed by a long line of authorities which state that while economic detriment is a factor for consideration, by itself it does not constitute extreme hardship. *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982), citing *Men Keng Chang v. Jiugni*, 669 F.2d 275, 279 (5th Cir. 1982) and *Mendoza-Hernandez v. Immigration and Naturalization Service*, 664 F.2d at 635, 638 (7th Cir. 1981). It is only when other factors such as advanced age, illness, family ties, etc. combine with economic detriment that deportation becomes an extreme hardship. *Matter of Anderson*, 16 I & N Dec. 596, 598 (BIA 1982). In this case, such other factors do not exist. There is no evidence of any illness in the applicant's family that requires medical treatment not available in Haiti. There is no evidence that does not have family ties in Haiti. Nor is there evidence that the applicant will not be able to find any employment in Haiti. The record reflects that he had been employed as an entomologist there. *Addendum to Form I-589.* General economic conditions in an

alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496, (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). Thus, the additional factors needed to combine with economic detriment in order to categorize the hardship as extreme are unfortunately not present in this case. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The applicant asserts that if his wife and son remain in the United States, his wife will not be able to financially support his son. The record as constituted contains no evidence corroborating [REDACTED] assertion that she will be unable to meet monthly household expenses in the United States without his income. The record contains no documents relating to the household expenses of the applicant's family and no evidence of [REDACTED] earnings. Consequently, there is no evidence to prove that she is unable to meet monthly expenses. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Furthermore, 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.

With regard to the birth of a child who is a United States citizen, the general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. Thus, the fact that the applicant's spouse will remain in the United States and take care of [REDACTED], a citizen of the United States, is not sufficient in itself to establish extreme hardship to her.

The AAO is also mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. With the circumstances here, the AAO finds that [REDACTED] 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. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship)). The Ninth Circuit in *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. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] upon separation from her husband if she remains in the United States, is unusual or beyond that which is normally to be expected upon deportation.

As previously stated in this decision, the BIA has stated that the factors to consider in determining whether extreme hardship exists provide a framework for analysis, and that the relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. The trier of fact must consider the entire range of factors concerning hardship in their totality and then determine whether

the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, supra, (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994)).

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the respondent statutorily ineligible for relief, the AAO declines to discuss whether or not 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.