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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: ALBANY, NY

Date:

DEC 04 2007

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

The applicant is a native and citizen of the Guyana. The record indicates that the applicant presented a photo substituted passport in the name of [REDACTED] when entering the United States on December 8, 2001. 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), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The officer in charge concluded that the applicant had 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 the Officer in Charge*, dated January 6, 2006.

In support of the waiver request, counsel submits a brief, dated February 23, 2006. 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

Counsel first asserts that the applicant's spouse would experience emotional hardship were the applicant removed from the United States. To support counsel's assertion, an evaluation has been provided by [REDACTED], dated February 25, 2004. As stated by [REDACTED] the applicant's spouse "...is experiencing considerable anxiety and feelings of depression at this time in relation to his wife's immigration difficulties and the prospect of her being deported. The couple have a genuinely loving and compatible relationship that involves a balancing of their personalities. She has a more confident and assertive personality that blends well with his more dependent and compliant nature...His sense of the future in terms of having a loving marriage, starting a family, buying a home, and in essence having a joyful and purposeful life, would be shattered...He is emotionally dependent on his wife, and predictably would become significantly depressed if she were deported..." *Psychological Evaluation from [REDACTED] Fine, Ph.D., Affiliated Psychological Services*, dated February 25, 2004.

In a follow-up evaluation, dated July 22, 2005, [REDACTED] states that the applicant's spouse and the applicant "...have been attempting to have a baby and are experiencing fertility problems. For the last several months [REDACTED] [the applicant's spouse] has been receiving medical treatment and [REDACTED] [the applicant] will soon be examined...The fertility difficulties have been very frustrating for the couple, and in particular [REDACTED] who believes the problem is his..." *Psychological Evaluation from [REDACTED] Ph.D., Affiliated Psychological Services*, dated July 22, 2005.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluations appear to be based on two separate interviews, in February 2004 and July 2005, between the applicant, the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluations, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

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

Moreover, counsel states that the applicant's spouse will suffer financial hardship if the applicant were removed from the United States. As stated by the applicant's spouse, "...theres (sic) my financial situations that I would have to face without my wife [the applicant] if she had to go back to Guyana. She helps to pay the household bills and also helps me with my car mortgage and house mortgage..." *Affidavit from* [REDACTED], dated April 15, 2004.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, although the applicant's spouse may need to make alternate arrangements with respect to his household/living expenses, it has not been established that such arrangements would cause him extreme hardship. Moreover, counsel provides no evidence to establish that the applicant would not be able to obtain gainful employment in Guyana, or any other country of her choosing, thereby assisting the applicant's spouse with the household expenses. 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)).

Counsel further contends that the applicant's spouse suffers from numerous medical conditions that require the applicant's presence. As counsel states, "...[the applicant's spouse] suffers from sleep apnea and is currently undergoing treatment. A few years ago, [REDACTED] fell asleep while driving his car and almost suffered a severe accident. [REDACTED] now relies on the Applicant to drive him to and from work and wherever else he needs to go. [REDACTED] suffers from hypolipidemia and is on a restricted diet and medication prescribed by his physician and attended to by the Applicant. [REDACTED] is infertile and has been undergoing treatment so that he and the Applicant will be able to raise a family..." *Brief in Support of Appeal*, dated February 23, 2006. The medical records provided by the applicant do not elaborate on what specific assistance the applicant's spouse needs from the applicant due to his medical conditions. For example, in the most recent medical report provided

regarding the applicant's spouse's sleep apnea, dated September 22, 2004, no reference is made to the applicant's spouse's inability to drive. The report only states that the applicant's spouse **opted out of surgery** at that time, and was advised to lose weight. *Sleep Disorders Center Office Report from* [REDACTED] dated September 22, 2004. Finally, according to a letter provided by the applicant's spouse's employer, Kingsway Manor Assisted Living, in a letter dated July 22, 2005, the applicant's spouse has been employed full-time since June 1998 as a cook; his medical conditions clearly do not hinder his ability to work and support his family.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant based on the denial of the applicant's waiver request. In this case, counsel references that the applicant's spouse has "...more than 25 family members residing in the Capital District...there is widespread criminal and political violence in Guyana...There is widespread disease and poverty in Guyana...There are no adequate health facilities in Guyana to treat [REDACTED] [the applicant's spouse's] sleep apnea or infertility...[REDACTED] is facing additional stress over the responsibility he exercises in helping his mother cope with high blood pressure and the worries he has if he accompanied the Applicant to Guyana and was not able to take care of his mother while in Guyana..." *Brief in Support*, at 3.

Counsel does not provide any supporting documentation to corroborate his assertions regarding country conditions in Guyana; the articles provided by counsel are general in nature and do not specifically relate to the applicant. Moreover, the applicant's spouse was born in Guyana and it has not been established that he would be unable to obtain gainful employment and appropriate medical coverage were he to return to his birth country. In addition, no evidence has been provided regarding the applicant's mother's medical condition, the short and long-term treatment plans, the gravity of her situation, and what specific assistance she needs from the applicant's spouse. The AAO notes that the record indicates that she has numerous relatives that reside with her and/or nearby, including her spouse and four children, and it has not been established that they would be unable to assist the applicant's spouse's mother should the need arise. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Finally, while the AAO sympathizes with the applicant and her spouse regarding their infertility problems, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level 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 if she were removed from the United States. 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.

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.