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**U.S. Citizenship
and Immigration
Services**

H2

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 17 2007

IN RE:

[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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under a different name. The record indicates that the applicant is married to a lawful permanent resident of the United States. The applicant 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 his lawful permanent resident wife and three United States citizen children.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated June 23, 2006.

On appeal, the applicant, through counsel, contends that the applicant's waiver "was erroneously denied." *Form I-290B*, filed July 21, 2006. Counsel states that the applicant's wife has a "history of mental illness," but "[s]he is mentally stable now and leads a productive life with [the applicant]." *Id.* However, counsel asserts that "any disruption in her family life could lead to a relapse of her diagnosed [sic] condition." *Id.*

The record includes, but is not limited to, counsel's brief, a psychological evaluation for the applicant's wife, and court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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...

In the present application, the record indicates that on July 19, 1986, the applicant entered the United States by using a Panamanian passport and visa under the name of [REDACTED]. On December 12, 1986, the applicant requested Asylum in the United States (Form I-589). On November 12, 1987, an immigration judge denied the applicant's asylum application. On June 21, 1990, the applicant filed an Application by Cuban Refugee for Permanent Residence (Form I-485A). On November 18, 1994, the District Director, Miami, Florida, denied the Form I-495A, but certified the decision to the AAO. On September 21, 1995, the AAO affirmed the District Director's decision, finding the applicant ineligible for adjustment of status. On July 25, 1996, the applicant's son, [REDACTED] was born. On November 27, 1997, the applicant's daughter, [REDACTED] was born. On February 3, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act (CAA) (Form I-485) and a Form I-601. The applicant departed the United States under advance parole and returned on May 27, 1999. On September 30, 2000, the District Director denied the Form I-601, finding the applicant was ineligible for a waiver because he had no qualifying relatives. On October 25, 2003, the applicant married [REDACTED], a lawful permanent resident, in Hialeah, Florida. On October 25, 2004, the applicant filed another Form I-485 under the CAA. On April 9, 2005, the applicant's daughter, [REDACTED] was born. On May 30, 2006, the applicant filed another Form I-601. On June 23, 2006, the Director, California Service Center, denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident wife.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's wife would face extreme hardship if the applicant were removed to Cuba. Counsel states the "applicant is the primary wage earner for the family." *Memorandum of Law*, page 1, filed July 21, 2006. Counsel submitted documentation establishing that the applicant's yearly income is approximately \$55,000.00 and the applicant's wife's yearly income is approximately \$16,800.00. See 2005 Form W-2 Wage and Tax Statement for [REDACTED] see also Letter from [REDACTED]

Owner/Operator of OceanRaider, Inc., dated July 14, 2006. Counsel states that “[a]side from the financial impact to Applicant’s wife if he is removed, the extreme hardship to Applicant’s wife is primarily based on her psychological condition.” *Memorandum of Law*, page 2, *supra*. [REDACTED] found the applicant’s wife is “in an stable, controlled Mental Status...Aside from her present affective disorder transients Major Depression and Anxiety Disorder, both due to her insecurity of a potential disruption of her present life situation.” *Initial Psychological Evaluation by [REDACTED]*, page 4, dated June 14, 2006. However, [REDACTED] stated if “this stability is disrupted...[it] could and perhaps will trigger a relapse on her diagnosed mental condition.” *Id.* [REDACTED] stated that the applicant’s wife has a history of mental disorder, and in 2001, the applicant’s wife was placed in the Citrus Program for one month for possible bipolar disorder. *Id.* at 3; *see also Medical Document from Citrus Health Network, Inc.*, dated July 6, 2006. The AAO notes that [REDACTED] did not state that the applicant’s wife could not receive treatment in Cuba and no documentation was submitted establishing that she cannot receive treatment for her psychological condition in Cuba.

The AAO finds that, based on her history of psychological problems, the applicant has demonstrated extreme hardship to his wife if she remains in the United States without the applicant; however, it has not been established that the applicant’s wife could not join the applicant in Cuba, which is her native country. Additionally, the applicant’s wife is a citizen of Cuba, who spent all of her formative years in Cuba, she has no family in the area, and she speaks Spanish. *Initial Psychological Evaluation by [REDACTED] MD*, page 3, *supra*. The applicant and his wife failed to demonstrate whether or not they have any other family ties in Cuba. Since the applicant’s wife’s anxiety and depression are primarily caused by the separation from the applicant, if the applicant’s wife joins the applicant in Cuba then the anxiety and depression would presumably no longer be an issue. Additionally, [REDACTED] states that the applicant’s wife’s stability will be disrupted by “a separation from the [applicant] due to deportation,” so if she joins the applicant in Cuba, then it would logically follow that her anxiety and depression would not be an issue, either. The applicant’s wife failed to provide any evidence that she could not obtain a job in Cuba or evidence that she could not receive medical treatment in Cuba for her anxiety and depression. Additionally, the record fails to demonstrate that the applicant could not obtain a job in Cuba or that he has no transferable skills that would aid him in obtaining a job in Cuba. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she accompanies him to Cuba.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s wife will endure hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she were to return to Cuba.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. 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)(2)(A) 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.