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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 22 2007

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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 Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Guyana, was found 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and 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 her husband and daughter.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her spouse, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she were required to return to Guyana, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States using a passport issued to another individual. Thus, the applicant procured admission to the United States by fraud. Accordingly, the applicant is 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). A Form I-130, Immigrant Petition for Alien Relative, filed on behalf of the applicant, was approved on July 1, 2003. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on January 10, 2002. She does not dispute her inadmissibility. Rather, she is filing for a waiver of her inadmissibility.

The record contains several references to the hardship that the applicant's daughter would suffer if the applicant were to depart the United States. However, 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. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or her daughter cannot be considered, except as it may affect the applicant's husband.

Thus, the first issue to be addressed is whether the applicant's return to Guyana would impose extreme hardship on her husband, the qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

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*, 22 I&N Dec. 560, 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 alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

The record reflects that the applicant's husband is a thirty-six-year-old citizen of the United States. He has been a citizen since 2001. He and the applicant have been married since January 19, 2001, and have a four-year-old United States citizen daughter.

The record contains an affidavit from the applicant, dated April 20, 2006. In her affidavit, the applicant describes the fraud she committed at the time of her entry into the United States; expresses her regret for committing the fraud; and asks for forgiveness.

The record also contains one questionnaire and two affidavits from the applicant's husband. In his questionnaire, dated July 12, 2005, the applicant's husband states that the couple's daughter would suffer if the applicant returned to Guyana, as she would receive a poor education there; that there has recently been flooding and outbreaks of disease in Guyana; that his father suffers from Parkinson's disease and from the aftermath of a stroke, and that he needs the couple's assistance; and that the couple's daughter would grieve the loss of her mother if the applicant returned to Guyana.

In his first affidavit, dated July 6, 2005, the applicant's husband stated that his wife regrets her commission of fraud; that he has a very close relationship with the applicant; that the couple's daughter is very attached to the applicant; that the couple's daughter needs her mother's care and attention; that the applicant takes care of the couple's daughter; that the applicant takes care of the family home; that the applicant's husband has been suffering from kidney stones and experiences great pain; that the applicant helps him through his pain; that the couple's daughter would be subjected to poor medical and educational conditions if the applicant returned to Guyana; and that Guyana was recently ravaged by floods.

In his second affidavit, dated July 6, 2006, the applicant's husband stated that suffers from Major Depressive Disorder, and that the condition would worsen if the applicant were required to return to Guyana; that his wife assists him financially; that the couple's daughter has been experiencing severe developmental delays for which she has been receiving treatment; that he is required to support his family and assist his disabled father; that he also supports his brother, who is also developmentally delayed; that his wife is vital to him; and that he would suffer extreme economic, emotional, and psychological hardship if the applicant's waiver application is denied.

The record also contains an evaluation regarding the couple's daughter, who, according to a psychological evaluation performed by performed by [REDACTED], a school psychologist, "is in the Mildly Delayed range of developmental functioning."

The record also contains information regarding the applicant's husband's brother, who, according to a January 28, 2000 psychological evaluation performed by [REDACTED], a psychologist, suffers "moderate to severe mental retardation."

Finally, the record contains a letter regarding the applicant's husband from [REDACTED] dated July 3, 2006. [REDACTED] states that the applicant's departure from the United States would inflict extreme hardship on her husband; that the couple's daughter will need special services for the foreseeable future; that the applicant's husband's income is used to support the family and to assist his father (who is completely disabled) and brother, who is developmentally delayed; that the applicant's husband is suffering from Major Depressive Disorder; that the applicant's departure from the United States would require the applicant's husband to quit his job in order to care for his daughter; that if he quit his job his daughter would not be able to obtain the services she needs; that his inability to continue caring for his father and brother (if he were to quit his job) would exacerbate his hardship; that the family is currently able to facilitate their daughter's developmental services because the applicant works in the evenings and, without this additional income, the applicant's husband would be unable to support the family; and that his recurrent major depressive disorder would require medical attention if the applicant were to return to Guyana.

[REDACTED] evaluation does not establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter does not indicate the

source of the information, how and by whom the diagnosis of major depressive disorder was reached, or even whether [REDACTED] ever actually spoke to the applicant's husband. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for the depression he suffers. The conclusions reached in [REDACTED]'s letter 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.

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."); *Shooshtary 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).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant returns to Guyana. Particularly if he remains in the United States with the couple's daughter while the applicant relocates to Guyana, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain and emotional hardship he would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor does the evidence of record does support the claim that the applicant's husband would be required to quit his job if the applicant were to return to Guyana. Nor has the applicant submitted any evidence to document the financial strain that the couple's daughter's developmental delay is causing to the family. Nor does the record contain evidence regarding the applicant's level of income. Without such evidence, CIS is unable to analyze how the loss of the applicant's income, if she were to return to Guyana, would adversely affect her daughter's treatment. Nor has any evidence has been submitted to document the claim that the applicant's husband provides financial support to his father and brother, or that the none of the applicant's husband's ten siblings can assist their father and brother.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly

in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the district director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.