

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

AZ

[REDACTED]

FILE:

Office: NEW YORK, NEW YORK

Date:

NOV 05 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED] is a native and citizen of Guyana 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. Mr. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Interim Director denied, finding that [REDACTED] failed to establish extreme hardship to a qualifying relative. *Decision of the Interim Director*, dated August 27, 2005.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 waiver application, dated May 24, 2004, reflects that the applicant admitted that she used a photo-substituted passport to gain entry into the United States. Based on her admission, the interim director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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. 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 is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is the father and mother of [REDACTED]. 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).

The record contains, in addition to other documents, affidavits from the applicant's mother and father and a letter from [REDACTED] a psychologist.

In her affidavit, the applicant's mother states that she and her husband are unemployed and rely on rental income as their livelihood. She states that they depend on their daughter to assist in paying the mortgage on the property they share. The applicant's mother states that their entire family resides in the United States and they have no immediate relatives in Guyana, where she states it is dangerous to live. She indicates that she and her husband cannot afford to visit their daughter in Guyana or provide her with any assistance. She states that the applicant is the oldest of her three children and that her youngest children are permanent residents. She states that she and her husband would suffer emotional and financial hardship if their daughter's waiver application were denied. The applicant's mother states that she has major depressive disorder-recurrent and severe, which limits her ability to support herself and function.

The affidavit from the applicant's father indicates that he has severely limited cognitive and affective abilities, which limits his ability to support himself and function.

The letter from [REDACTED] Ph.D., conveys that the applicant's father is "unable to read and write English at a level necessary for independent adult functioning" and that her mother is unable to work on account of major depressive disorder-recurrent and severe. She states that the applicant's 32-year-old sister will not assume any responsibilities other than for her own needs; and her brother has no contact with the family. Ms. [REDACTED] states that the applicant's parents have severely limited cognitive and affective abilities; her father scored in the first-grade level on a nationally standardized test measuring reading ability. She states that the applicant's mother has Major Depressive Disorder-Recurrent and Severe and has symptoms of Post-traumatic Stress Disorder. According to [REDACTED] the applicant's parents are unable to function independently as adults without assistance.

Extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative 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.

"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." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. 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 present record is insufficient to establish that the applicant's father or mother would endure extreme hardship if he or she joined the applicant in Guyana.

The conditions in Guyana, the country where the applicant's father or mother would join her, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Other than the statement by the applicant's mother, that Guyana is a dangerous and terrible place, neither the applicant's mother nor father make a hardship claim about joining their daughter to live in Guyana.

The record fails to establish that the applicant's father or mother would endure extreme hardship if he or she remains in the United States without her.

The applicant's parent's claim that they rely on their daughter to assist in paying the mortgage and that they will experience economic hardship if her waiver applicant were denied. The record reflects that the applicant's parents own rental properties, and the income tax return for 2004 shows total income of \$19,329. However, no documentation has been presented to establish that the applicant assists in paying the mortgage on her parent's house. 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)).

The letter from [REDACTED] conveys that the applicant's mother is unable to work due to major depressive disorder-recurrent and severe and symptoms of posttraumatic stress disorder. Although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] conclusion about the mental health of the applicant's mother does not seem to be based on an ongoing relationship between a mental health professional and the applicant's mother or on any history of treatment. Moreover, the conclusions reached in the submitted letter, which seem to be based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing their value in determining hardship.

[REDACTED] states that the applicant's parents are unable to function independently as adults without assistance. The AAO does not find this persuasive. The record reveals that the applicant's parents have been able to function independently as adults: they have been able to acquire rental property that provides them with monthly income.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if

not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The affidavits from the applicant’s parents reflect that they are very concerned about separation from their daughter. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s mother and father, if she or 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 as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant’s parents, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shooshtary, Perez, and Sullivan*.

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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal 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(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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, 8 U.S.C. § 1182(i), 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.