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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 23 2008

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 PETITIONER:



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, Director
Administrative Appeals Office

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

The applicant 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 having sought admission into the United States by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The service center director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Service Center Director Decision* dated March 10, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that the applicant qualifies for a waiver under section 212(i) of the Act because his wife would suffer extreme hardship if she relocated to Haiti with her husband and if she remained in the United States without him. In addition to evidence submitted with the waiver application, counsel submitted with the appeal an affidavit from the applicant’s mother, who as a Lawful Permanent Resident is also a qualifying relative, concerning hardship she would suffer if the applicant were returned to Haiti.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. 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.

In the present case, the record reflects that the applicant is a forty year-old native and citizen of Haiti who has resided in the United States on July 3, 2000, when he attempted to enter using a fraudulent Haitian passport under the name [REDACTED]. The applicant's wife is a thirty-three year-old native of Haiti and citizen of the United States who has resided in the United States since 1996. The applicant and his wife live in Randolph, Massachusetts with their U.S. Citizen daughter and the applicant's mother, a Lawful Permanent Resident who has resided in the United States since 1985.

Counsel asserts that the applicant's wife and his mother would suffer extreme hardship if the applicant were removed from the United States due to family ties in the United States and poverty and dangerous conditions in Haiti. Counsel further asserts that the applicant's wife would suffer financially if she remained in the United States because she would lose the applicant's income. In support of these assertions counsel submitted with the waiver application an affidavit prepared by the applicant's wife, copies of the applicant's marriage certificate and their daughter's birth certificate, and a photograph of the applicant with his wife and daughter. No additional evidence was submitted with the waiver application. The affidavit states only the date and place of birth of the applicant's wife, the date and place of her marriage to the applicant, and the following:

[I]t will be an extreme emotional hardship on me and our daughter [REDACTED] if [REDACTED] is separated from us and sent back to Haiti, my health would be affected and I will be devastated if he were sent to Haiti by himself. He has not had any problems. It is for these reasons that I am applying for a waiver so he may . . . continue to stay with us and we continue as a family. *See affidavit of [REDACTED] dated January 16, 2003.*

No further information was submitted to explain how the qualifying relative's health would be affected or to provide any detail concerning the emotional hardship the applicants' wife would experience if the applicant were to return to Haiti. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only

available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

On appeal counsel additionally asserts: “There is important evidence presented now that was not filed with the original I-601,” and states that the applicant’s mother is also a qualifying relative and that it appears the applicant has six siblings who are United States citizens. No documentation was submitted establishing the presence of these siblings in the United States. Counsel states that the circumstances of the applicant’s mother, as outlined in her affidavit of extreme hardship submitted with the appeal, and these additional family ties should now be considered. The AAO notes that a copy of the applicant’s birth certificate names his mother as [REDACTED], while the affidavit and supporting documents, including a permanent resident card, are in the name [REDACTED] or [REDACTED]. The documentation therefore does not clearly establish that [REDACTED] is the applicant’s mother. Furthermore, the hardship affidavit is identical to the affidavit prepared by the applicant’s wife and states, “it would be an extreme emotional hardship on me if [REDACTED] is separated from me and sent back to Haiti, my health would be affected and I will be devastated if he were sent to Haiti by himself.” See *affidavit of [REDACTED]*, dated April 28, 2006. There is no supporting evidence to explain how her health would be affected or to provide any detail concerning the emotional hardship the applicant’s mother claims she would suffer.

Counsel also states that the applicant’s qualifying relatives would suffer additional hardship because of the conditions in Haiti, stating that “conditions in Haiti are well known economically, physically, and politically.” Counsel further asserts: “Poverty and unemployment are and have been existing for some time. The country is in a dangerous and revolutionary condition,” and states that it is unlikely the applicant would be able to find employment there. No evidence was submitted concerning economic and political conditions in Haiti or the applicant’s ability to find employment in Haiti and support his wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’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). Counsel also asserts that the absence of the applicant’s income would be an important hardship factor because he and his wife are in the process of buying a home. No evidence was submitted to document the impending home purchase. Furthermore, the AAO notes that in addition to evidence that the applicant has been employed at Wal-Mart, the record also establishes that the applicant’s wife is employed as a certified nursing assistant and is not dependent on the applicant for financial support. See *documents submitted in support of I-864, Affidavit of Support*. Although the loss of the applicant’s income is likely to have a negative impact on the financial situation of the applicant’s wife, 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.

It appears from the record that any emotional or financial hardship to the applicant’s wife and mother would be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 court in *Hassan v. INS, supra*, further held 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.

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relatives, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.