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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 10 2008

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:



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 of the 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 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. The applicant's spouse and parents are naturalized citizens of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated August 19, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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 record reflects that the applicant presented to a primary inspector at the Ft. Lauderdale International Airport a photo-substituted Barbados passport containing a valid U.S. visa. Based on this evidence, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, her identify, so as to gain admission into the United States.

The section 212(i) waiver for fraud and misrepresentation states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse and parents. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether

the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“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).

Extreme hardship to the applicant’s spouse or parent must be established in the event that he or she remains in the United States without the applicant, and in the alternative, if he or she joins the applicant to live in Guyana. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains, among other documents, birth certificates, letters, a psychoemotional evaluation and family dynamics assessment, medical records, a marriage certificate, birth and naturalization certificates, and the document entitled “Canadian Society for International Health.”

On appeal, counsel states that the applicant’s two children are U.S. citizens, her husband and parents are naturalized citizens, and her siblings are permanent residents. She states that a child of the applicant has special needs. According to counsel, the applicant’s husband is a native of Algeria and has never been to Guyana and will not live there because it is a poor country and unable to assist with his child’s cognitive disabilities. Counsel states that if the applicant’s husband and children remained in the United States without her, he would have to provide for his child as a single parent. Counsel indicates that the applicant’s parents live in the same building as the applicant, and that she cleans their apartment, prepares their meals, does their laundry, takes them to medical appointments, and loves and supports them. Counsel states that the applicant’s mother had a hysterectomy for cervical cancer and has arthritis and is not mobile at times. She indicates that the applicant has a close relationship with her parents, especially her father, and if the waiver application were denied they would not be able to afford visiting her in Guyana.

The letter dated September 30, 2005 by [REDACTED] Ph.D., stated that the applicant's family consists of her parents, siblings, husband, and two children. She stated that the applicant's parents live several floors above the applicant in the same apartment building. [REDACTED] stated that the applicant's mother is 62 years old, has health problems, and works part-time as a home health aide; her father is 69 years old and works as a security guard. [REDACTED] stated that the applicant's husband does not have steady employment and currently works on his own selling luxury products. [REDACTED] indicated that the applicant's daughter tested severely delayed and needs Early Intervention Services. She stated that The Baley Scales of Infant Development – 2nd Ed. shows the applicant's daughter scored at less than 1 percent of cognitive functioning, which represents significantly delayed cognitive abilities and performance. Ms. [REDACTED] stated that the applicant's daughter should be referred for Early Intervention evaluation and services and the applicant should remain with her family so that her husband can work and her daughter can receive essential services.

The birth certificates show that the applicant's daughter is four years old and her son is six years old.

In her letter dated October 8, 2006, the applicant indicated that her husband's income will not be sufficient to support the family if she is no longer present to care for the children.

The letter by the applicant's husband conveyed that he will suffer extreme financial and emotional hardship if his wife were not allowed to remain in the country. He stated that in his native country family values and stability are important, and without his wife's presence he will not be able to emotionally support his children. He stated that Guyana is unstable, he has no immediate relatives there, and because of his education and background, jobs would not be immediately available to him or to his wife, which will cause stress and instability in their relationship.

The affidavit by the applicant's husband conveyed that if his wife leaves the United States he will be a single parent and will need to take time off from work to care for his children. He stated that his daughter's condition requires special treatment that he cannot afford.

The letter by the applicant's father conveyed that he has a close relationship with the applicant, speaking with her every day. He stated that he is 70 years old, has arthritis, and depends on the applicant to carry and move things, clean the apartment, and cook. He stated that he will not work much longer and that the applicant and her husband will accept him and his wife into their home and will care for them. He stated that he would not be able to travel to visit his daughter if she lived in Guyana.

The letter by the applicant's mother is similar in content to that of her father. Additionally, her mother stated that the applicant took care of her when she had surgery in 1998 and that the applicant is her most responsible child and would forego celebrating Christmas if the applicant were alone in Guyana. The applicant's mother conveyed she has high blood pressure and will not travel by plane to visit her daughter if she lived in Guyana.

The affidavit by the applicant's mother conveyed that she is employed part-time and her husband is employed in a low-wage position and they do not expect to work much longer due to their physical conditions.

The psychoemotional evaluation and family assessment by [REDACTED], LMHC, dated October 7, 2006, conveyed that the applicant's husband runs a retail business independently and the applicant has a high school education and is a housewife and caretaker of her children and parents. [REDACTED] stated that the applicant's father is employed as a security guard and her mother as a home health aide, but with limitations caused by hypertension, arthritis, and blood clotting. He stated that the applicant indicates that Guyanese families are highly united, with life-long relationships and interdependence. [REDACTED] stated that the applicant's husband indicates that the applicant strengthens their daughter's development. He stated that the applicant's husband conveys that he will not have their children live in Guyana or Algeria because they are impoverished and lack employment, high-quality healthcare, and a good education. Mr. [REDACTED] stated that the applicant conveys that the unemployment rate is over 40 percent in Guyana, and as a result, there are burglaries, armed robberies, kidnappings, and gang-related crimes. [REDACTED] stated that the applicant's husband conveyed that relocation to a Third World country will have an unpredictable impact on his five-year-old son and two-year-old daughter and his in-laws. [REDACTED] stated that the applicant's husband has mixed anxious-depressed mood and inner tension feelings and the symptoms associated with anxiety, stress, and depression, which are caused by his wife's immigration problem. The AAO notes that [REDACTED] stated that the applicant's daughter demonstrated "adequate motor, socio-communicative, and expressive resources" and that some of her "graphomotor performances appeared below age expectations and in need of continuing stimulation and enhancement."

The record contains letters commending the applicant's character. For example, the letter by [REDACTED], Family Community Partnership Spec., indicated that the applicant volunteers at her son's school; and the letter by [REDACTED], Pastor, stated that the applicant volunteers at the church.

The medical records show the applicant's mother as having a hysterectomy for cervical cancer in 1998, and that she has had back pain, knee pain that is exacerbated by walking, headaches, high blood pressure, and hypertension.

The document by Canadian Society for International Health discusses improvements to Guyana's health care system. The Library of Congress country study of Guyana provides data as of 1992. The Sunday Stabroek Perspective discusses the financial institutions in Guyana. The document "National Development Strategy," dated 1996, indicates that Guyana "now fares poorly in comparison with neighboring countries in regard to basic health indicators," with life expectancy declining from 70 years in 1985 to 64 years in 1992, and the leading causes of mortality include forms of heart disease. The National Development Strategy document conveys that "[d]uring the long period of decline, many of the most qualified medical practitioners left the country, facilities, deteriorated, many pieces of equipment lay inoperative, and pharmaceuticals and other medical supplies became scarce."

The record is sufficient to establish that the applicant's mother would experience extreme hardship if she were to join the applicant to live in Guyana.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant 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).

The record reflects that the applicant's mother is 65 years old who had a hysterectomy for cervical cancer and has hypertension and arthritis and continues to require medical care. Because the documentation in the record shows that many qualified medical practitioners left Guyana, and its facilities are deteriorated and its equipment often inoperative, and pharmaceuticals and other medical supplies are scarce, the AAO finds that the applicant's mother would experience extreme hardship if she were to join the applicant to live in Guyana.

The AAO finds that the record fails to establish extreme hardship to the applicant's spouse or parents if they remain in the United States without her.

The applicant's husband indicates that his wife must remain in the United States because she cares for their daughter who has special needs. The AAO notes that the conclusion reached by [REDACTED] which is that the applicant's daughter should be referred for Early Intervention evaluation and services because she tested severely delayed, is not substantiated by [REDACTED]'s evaluation; he stated that the applicant's daughter demonstrated "adequate motor, socio-communicative, and expressive resources" and that only some of her "graphomotor performances appeared below age expectations and in need of continuing stimulation and enhancement." Furthermore, the applicant did not submit any documentation to show that her daughter had undergone an Early Intervention evaluation, as [REDACTED] recommended in her September 2005 evaluation. Without the Early Intervention evaluation, the AAO cannot determine whether the applicant's daughter requires specialized care.

The applicant's mother and father stated that the applicant cares for them, cleaning, cooking, and taking them to medical appointments. Although the record shows that the applicant's mother has health problems, it also shows that she is employed part time as a home health aide, which signifies her ability to care for others as well as herself. Furthermore, the applicant has not submitted any documentation to establish that her siblings are unable to care for their parents in her absence.

Family separation is important in determining hardship. Courts 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, the fact that an applicant has children born in the United States is not sufficient, in itself, to establish extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as did the court in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (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.

The record conveys that the applicant’s husband and parents are very concerned about separation from her. 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 husband and mother and father, if they remain 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 required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which they will experience, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The applicant’s husband claims that he will experience financial hardship if he raises his children alone. The record, however, does not contain any documentation such as income tax records and invoices of household expenses to substantiate this claim. Without such documentation, the AAO cannot determine whether the applicant’s husband is unable to afford childcare for his daughter and son. 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).

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 been met to establish extreme hardship to the applicant’s mother in the event that she were to join the applicant to live in Guyana. However, the requirement has not been met so as to warrant a finding of extreme hardship in the event that the applicant’s husband or mother or father remained in the United States without her. 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 section 212(i) of the Act.

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, 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.