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

H2

[REDACTED]

FILE:

Office: NEW YORK, NY

Date:

NOV 26 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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Trinidad and Tobago 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 attempted to enter the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not establish that the applicant's spouse, Joseph Bush, would suffer extreme hardship if she were removed from the United States. She denied the application accordingly. *Decision of the District Director*, dated April 8, 2008.

On appeal, counsel states that the district director erred in denying the applicant's waiver application. She asserts that the former Immigration and Naturalization Service did not find the applicant to have presented a fraudulent document at the port-of-entry and, alternatively, that the applicant has established that her spouse would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated May 7, 2008.

The record indicates that, on July 23, 1999, the applicant presented her Trinidadian passport with a fraudulent ADIT stamp to an immigration inspector at the John F. Kennedy International Airport. Contrary to counsel's assertions on appeal, the Form I-862, Notice to Appear, issued to the applicant on August 9, 1999, charged her as an alien who had sought to procure admission to the United States by fraud or willful misrepresentation and found her inadmissible under section 212(a)(6)(C)(i) of the Act.

Before considering the record with respect to the applicant's claim related to extreme hardship, the AAO will address the applicant's assertions, stated at the time that she gave sworn statements on July 24, 1999 and August 2, 1999, that she was unaware that the ADIT stamp in her passport was fraudulent, that her passport was given to an attorney and came back with an ADIT stamp in it. The applicant further indicated that she was suspicious of the ADIT stamp and had taken it to a clerk on the third floor of the former Immigration and Naturalization Service (INS) district office in New York who told her that she could use the stamp to travel in and out of the United States.

The AAO acknowledges the applicant's assertions. It notes, however, that the applicant's claims that an unknown attorney placed the fraudulent ADIT stamp in her passport and that she consulted an unknown INS clerk regarding its validity do not insulate her from responsibility in the matter as she is the individual who presented the fraudulent documentation at the port-of-entry. Accordingly, the AAO finds the applicant to be inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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.

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 AAO notes that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, i.e., the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, the only qualifying relative is ██████████, the applicant's spouse. Hardship the alien herself experiences or that is felt by other family members is not considered in waiver proceedings under section 212(i) of the Act, except as it would affect the applicant's spouse. Should the record establish that ██████████ would experience extreme hardship, it will be 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 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 U.S. 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that the applicant must prove that ██████████ would experience extreme hardship whether he relocates to Trinidad or remains in the United States without the applicant, as he is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record to includes the following evidence in relation to the applicant's claim of extreme hardship: counsel's brief, dated June 7, 2008; a statement from [REDACTED], dated December 11, 2007; medical documentation related to the applicant's health, dated July 3, 2006 and August 10, 2006; medical documentation related to one of the applicant's children, dated 2004-2008; and a letter from [REDACTED] the officiating priest at [REDACTED], dated April 28, 2008.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Trinidad. The record does not, however, address the impact of relocation on [REDACTED]. The submitted evidence focuses only on the impact of separation on the applicant's spouse. Accordingly, the AAO is unable to find that the applicant's spouse would suffer extreme hardship if he moved to Trinidad with the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In his statement, [REDACTED] asserts that, until he met the applicant, he was unable to hold a steady job and was in a constant state of depression. He states that she has made him the man he is and that she is close to his mother, which is a comfort to him. [REDACTED] also asserts that he would have no life without the applicant, and would suffer from depression and be mentally frustrated if he had to live without her. [REDACTED] contends that, if the applicant were to be removed, he would have no one to help him support their children and that his income would decrease because he would probably have to sacrifice work to care for the children. He states that, eventually, he would be at risk of losing his home.

In support of [REDACTED] statement, counsel contends that even though the record does not offer documentation to establish [REDACTED] "prior mental condition," this lack of evidence does not mean that his mental condition did not exist. She states that he took only over-the-counter medication because of his employment, as a prescribed medication might have affected his ability to perform at work. As further proof of the family's suffering, counsel points to the applicant's miscarriage during detention; the mental anguish that has affected [REDACTED]; the delay in educating the applicant's children; and the medical condition of the applicant's youngest child. She notes that the family has been involved in family counseling at their place of worship for almost three years.

While the AAO notes counsel's assertion that the absence of documentation does not necessarily mean that [REDACTED] has not suffered from depression, it also observes that the burden of proof in this proceeding lies with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In the absence of documentary evidence, Mr. [REDACTED] statements are insufficient proof that he suffered from depression prior to the applicant's arrival in his life. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 AAO further notes that, although [REDACTED] states he would have no one to help him support the applicant's children and that he would have to sacrifice work to care for the children, the applicant's three children are adults, ranging in age from 21 to 25 years of age, and the record does not report any health conditions that would limit their ability to care for themselves.

The medical records submitted in relation to the applicant indicate that, in August 2006, she was diagnosed in the emergency room at the Jamaica Hospital Medical Center with adjustment disorder with depressed mood

and was prescribed medication. Although the aftercare sheet in the record shows that the applicant was instructed to schedule a follow-up appointment within seven days, the record contains no additional evidence that the applicant has subsequently sought or received mental health treatment or continues to face any mental health issues. While the medical record does not indicate the cause of the applicant's mental health problems in August 2006, a second medical document in the record establishes that the applicant was treated for what appears to have been a miscarriage of an ectopic pregnancy in July 2006. While the AAO acknowledges this documentary evidence of the medical problems experienced by the applicant, it notes, as previously stated, that harm experienced by the applicant is not considered in section 212(i) proceedings unless it is shown to affect the qualifying relative. In this matter, the record does not address how the applicant's medical problems would affect her spouse if her waiver application were to be denied.

The same is true for the record's documentation of the recurrent toxoplasmosis retinochoroiditis that affects the applicant's youngest son. While the record establishes that the applicant's son suffers from this condition, he is, like the applicant, not a qualifying relative in this proceeding. As the record fails to indicate the impact of this condition on the youngest son's ability to function on a day-to-day basis, whether it will result in permanent damage to his eyesight or the level of care the condition requires, the applicant has not established that her son's eye condition would result in hardship to her spouse.

The letter from the officiating Hindu priest at the applicant's place of worship, [REDACTED], states that he has been counseling the applicant's family, including her three children, on the average of twice a month since August 2006. [REDACTED] notes that both [REDACTED] and the applicant's immediate families are in the United States. He also asserts that if the applicant were to be removed, [REDACTED] would be left in a predicament as to how to maintain the family financially and the applicant's absence would lead to a total breakdown of the family's stability and unity. Financially [REDACTED] contends, [REDACTED] would be a "total wreck" if he is separated from the applicant who is a strong contributor to the family's financial well-being. He also states that the applicant would be unable to obtain employment in Trinidad as she did not graduate from high school.

With regard to the emotional health of the applicant's spouse, [REDACTED] states that [REDACTED] has expressed concern about the applicant's health and welfare in Trinidad and that [REDACTED]'s concerns regarding the applicant's security would lead to mental stress and fatigue that, in turn, could cause his relapse into a negative mental state. He notes that [REDACTED] has had numerous stress-related problems that, with the help of the applicant, he has been able to control. He further contends that the removal of the applicant would lead to instability in the home, possible repercussions for the applicant's children who would not have her guidance to offset peer pressure, mental fatigue on the part of [REDACTED] and the creation of a financial hole from which it would be difficult to rebound.

While the AAO finds [REDACTED]'s insights to be relevant to this proceeding, it does not find them to establish that the applicant's removal would result in extreme hardship to [REDACTED]. [REDACTED]'s statements concerning the financial impact of the applicant's removal are not supported by documentary evidence of the applicant's and [REDACTED]'s finances and are, therefore, insufficient proof of hardship. *Matter of Soffici*, supra. The AAO also notes that [REDACTED]'s statement about the applicant's lack of a high school degree is contradicted by the applicant's assertion during testimony she provided on August 2, 1999. At that time, the applicant testified that she had completed 17 years of school and finished college in Trinidad. Further,

although [REDACTED] has at least a two-year relationship with the applicant's family, there is no evidence in the record that he has the training or qualifications to assess how the removal of the applicant would affect [REDACTED]'s mental health.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS*, *supra*, held further 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 removed.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would experience the distress and upheaval routinely created by the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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 thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remained in the United States following her removal.

The documentation in the record, whether considered separately or in the aggregate, fails to establish the existence of extreme hardship to the applicant's spouse caused by the denial of the applicant's waiver application. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.