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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: CLEVELAND, OHIO Date: AUG 09 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Guyana. He was found to be inadmissible to the United States pursuant to 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 procured admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative based on his marriage to a naturalized U.S. citizen. He 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 and reside with his U.S. citizen spouse and stepchildren.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated April 18, 2001. A Motion to Reopen and/or Reconsider was dismissed by the District Director on September 15, 2003.

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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that in December 1995 at the Miami International Airport the applicant used a photo-substituted Trinidad passport in order to gain admission into the United States by fraud and willful misrepresentation of a material fact. The applicant was admitted as a nonimmigrant visitor for pleasure. After entry, he remained longer than authorized and on December 2, 1996, he married a U.S. citizen.

Section 212(i) of the Act provides 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. 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 the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, counsel asserts that the Immigration and Naturalization Service (now known as Citizen and Immigration Services, (CIS)) failed to correctly assess extreme hardship to the applicant's spouse (Ms. In support of this assertion, counsel submits a brief, a letter from tax returns, copies of medical reports, copies of the applicant's stepchildren's birth certificates, and copies of country conditions for Guyana prepared by the U.S. State Department. Counsel states that the applicant is the main financial provider responsible for all financial obligations of the family. In her affidavit states that she and her children will suffer financially if the applicant is not permitted to remain in the United States. states that she would not be able to meet her monthly financial obligations since she is not able to work due to chronic back problems. In counsel's brief and in her affidavit, it is stated that suffers from back problems that prevent her from working. Counsel further states that does not want to relocate to Guyana because of limited opportunities for her children.

There are no laws that requir to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

In an affidavit Ms. states that she suffers from an unbearable and seemingly incurable lower back pain, and due to this she is unable to work further states that she is receiving medical treatment for her condition. Counsel resubmit s medical records. These records refer to s numerous visits to physicians regarding medical conditions ranging from chest pain, right hand pain, stress test, neck pain, feet swelling, feeling nauseous, menstrual irregularities, dizzy spells and one visit regarding back pain. None of the medical records suggest that is unable to work. The medical documentation provided by counsel does not include a specific diagnosis or evidence of treatment regarding back problems. There is no independent corroboration to show that urrent medical conditions would be jeopardized if the waiver application is denied and the applicant is not permitted to remain in the United States.

In the present case the record reflects that is a native of Guyana. No evidence was provided besides counsel's statement and documentation regarding country conditions in Guyana that are general in nature and do not address any specific hardship would experience, to substantiate the claim that Ms. would not be able to readjust to life in Guyana.

On appeal counsel states that the applicant's stepchildren are supported solely by him and if they relocate to Guyana with the applicant the whole family would experience serious economic consequences because the applicant would not be able to find adequate employment due to the unemployment rate.

As mentioned, 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 to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident stepchild. The assertions regarding the hardship the applicant's stepchildren would suffer will thus not be considered.

In his brief counsel emphasizes the hardship to the applicant as set out in *Matter of L-O-G,* Interim Decision 3281 (BIA 1996). *Matter of L-O-G, Id.* dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

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 (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 deported. 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. 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.