U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI Date: OCT 1 2 2004

IN RE: [redacted]

PETITION: 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:

[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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the district director, Miami, 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 submitting a fraudulent Alien Registration Receipt Card (Form I-551) in connection with her attempted entry into the United States on February 23, 1995 at Miami International Airport. The applicant was placed into removal proceedings, filed an application for asylum, but failed to appear for an immigration hearing on October 15, 1996, and was ordered excluded and deported in absentia. The applicant subsequently divorced her Haitian spouse and married her current U.S. citizen spouse, Elize Edouard on March 24, 1997. Her spouse subsequently filed a Petition for Alien Relative (Form I-130), on behalf of the applicant on March 27, 1997, and the applicant simultaneously applied for adjustment of status pursuant to section 245 of the Act. The I-130 petition was approved by the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] on September 11, 2000. During the course of these proceedings it became apparent that the applicant had sought to enter the United States through fraud, and the applicant was advised to submit an Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow her to remain in the United States with her United States citizen spouse. The application was filed on December 22, 1998, accompanied by a brief statement from the U.S. citizen spouse dated December 21, 1998, asking that his wife not be removed and stating that she made his life happy and he would be unable to live without her. For reasons that are unclear, no action took place on this application, and a second Form I-601 was filed on August 23, 2000, accompanied by several documents.

The district director issued a decision denying the waiver application on September 14, 2000, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case his U.S. citizen spouse. *Decision of the District Director,* dated September 14, 2000. Counsel submitted an appeal on October 1, 2000.[1]

On appeal counsel offers very little support for the appeal. The submission consists of a brief statement appearing on the I-290B which merely states that CIS erred in determining that the applicant's spouse would not suffer extreme hardship, and a psychological evaluation of the applicant's spouse assessing the impact the applicant's deportation would have upon him. The Form I-290B sets forth little in the way of reasons why the district director's decision is erroneous and could be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(v). However, we will address the appeal on the merits to address the additional evidence submitted on appeal.

Counsel has not submitted a brief in support of the appeal, but has merely stated that the district director's decision was erroneous. The AAO will evaluate the case by examining the evidence before the district director, and will then turn to the psychological evaluation submitted on appeal.

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[1] We note that the form I-290B contains three different receipt stamps from the Miami office. Two of those stamps bear a date of October 1, 2003, including one reflecting that it was received in the mailroom on October 1, 2003. If that were the filing date, the I-290B would be three years late. However, a separate stamp appears to bear a date stamp of October 16, 2000. Because the evidence of when the application was received appears to be ambiguous, we will give the applicant the benefit of the doubt and treat the appeal as timely.

On appeal, counsel asserts that the waiver application should be granted based upon the hardship that will befall the applicant's U.S. citizen spouse due to the break up of the family. The evidence reviewed included the spouse's initial statement dated December 21, 1998, discussed previously in this decision, the marriage license and certificate evidencing marriage of the applicant and her spouse, a certificate of identity issued by the Bahamas to the applicant's minor child, and a copy of the child's Permanent Resident Card, a copy of a Certificate of Naturalization issued to the applicant's spouse in 1986, and a brief from the applicant's spouse submitted in support of the Form I-601. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

Counsel contends that the district director erred in failing to consider the evidence submitted and on that basis denying the application. Counsel asserts that the evidence in the record establishes that applicant's removal would result in extreme hardship to the applicant's spouse.[2]

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 the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems 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.

The majority of the documents offered serve to establish the relationship and identity of the parties. The two documents submitted with the Form I-601 which substantively address the hardship issue are the two statements submitted by the applicant's spouse. Those documents, while they support a finding that he will experience some hardship based upon the separation from his wife, and the difficulties which may result from raising his wife's son without her, they do not establish that the hardship will be extreme. The brief additionally cites to various articles which discuss the difficulties faced by children of divorce and who are raised in single parent families. However, the AAO finds these references of little relevance to the instant case as it is the hardship to the spouse which is the relevant factor, and there is no indication that the applicant's spouse is experiencing, or will experience any hardship related to the son, by virtue of any affect of the applicant's possible removal from the United States. The brief also indicates that should the applicant's spouse and child return with her to Haiti, the applicant's spouse would encounter difficulties due to the conditions of poverty, crime and inadequate medical care in Haiti. While the AAO acknowledges that returning to Haiti would impose some hardship, it is noted that the applicant's spouse was, himself, born in Haiti, which would serve to ease his transition due to the familiarity with the country, its language, and culture. However, more importantly, nothing requires the spouse to return to Haiti, and he could avoid the hardship of life in Haiti by remaining in the United States.

We turn next to the documentation submitted on appeal which consists of an evaluation conducted on September 30, 2000, by Mitchell E. Spero, a licensed psychologist whose letter indicates that the spouse "was

[2] Although the record contains numerous references to the hardship that will be suffered by the applicant's permanent resident child, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

referred by his attorney...to assess the validity of his Hardship Case Appeal in attempts to stop the deportation of his wife and stepdaughter." *See Psychologist's* Report, dated October 10, 2000. The psychologist's report indicates that when questioned about the effect his wife's deportation upon him, the spouse indicated that, "My life would be bad. It would be very bad." *Id* The psychologist determined that the applicant's spouse was "depressed and anxious" and that additional testing indicated that he exhibited several characteristics, which indicate that he depends excessively upon his wife to care for him. The evaluation further recommends that the INS consider the case to be one of extreme hardship and further recommends that the spouse pursue psychological treatment. *Id.*

We are not convinced that the results of the evaluation compel a finding of extreme hardship. It appears that the consultation was made for the purposes of predicting the effect of his spouse's removal, and not on the basis of any longstanding psychological problems he is experiencing which would be affected by his wife's removal. While we do not dispute that separation from the spouse may contribute to his anxiety and stress, it appear that a treatment regimen is available and has been recommended by the examining psychologist. Consequently, any negative effects appear neither severe, nor certain, and are treatable. Consequently, the AAO does not conclude that the applicant's spouse would experience extreme hardship.

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 deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is completely unknown to the AAO due to the absence of evidence on this issue. Based upon the applicant's representations, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.