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U.S. Citizenship and Immigration Services

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DEC 0 5 2007

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:

[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, Chief
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, [redacted], is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is married to [redacted], a naturalized citizen 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 district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Service Center Director, dated December 5, 2005.* The applicant submitted a timely appeal.

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 stated that she entered the United States crossing the Canadian border on March 28, 1998 with a passport that did not belong to her and that she was not detained or arrested by immigration officers. *Applicant's Sworn Statement, dated August 22, 2005.* Based on the applicant's admission, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether a waiver of inadmissibility should be granted.

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 applicant seeks a waiver of inadmissibility. 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 to the applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is 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).

The record contains, in addition to other documents, affidavits, income tax records, divorce records, birth certificates, a U.S. Department of State report on Haiti, a letter from [redacted] information about glaucoma, wage statements, and a marriage certificate

The affidavit dated January 4, 2006 from [redacted] states that for the past two years he has been under the care of [redacted] a physician practicing at Boston Medical Center and in Waltham, for infertility.

The letter dated January 2006 from [redacted] indicates that [redacted] has very severe primary open-angle glaucoma and that he is taking three different eye drops to treat the disease.

The information about glaucoma from the Glaucoma Research Foundation indicates that there is no cure for glaucoma and it is the leading cause of blindness.

The letter from [redacted], indicates that the applicant registered at the Harvard Street Neighborhood Health Center on December 19, 2000.

The August 22, 2005 affidavit by [redacted] states that he has been married to the applicant since January 30, 2001, that his wife is of great support to him and is his closest friend, that he relies on her for emotional support, and that she contributes financially. He states that his wife provided emotional and financial support when he worked full-time and attended a biotech program at a community college. He states that he graduated from the program and is employed as a lab technician. [redacted] conveys that he and his wife want to have children and that without her his dreams would shatter.

The wage statements indicate that the applicant's regular gross pay is $442.0l each week and her husband's gross pay is $1,358.44 every two weeks.

On appeal, counsel states that unlike the alien in *Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991), the applicant has been gainfully employed and is of good moral character. Counsel states that [redacted] had a criminal record and did not have work authorization while claiming financial hardship to his parents. Counsel states that the applicant would fear for her life and safety in Haiti, and she states that *Tukhowinich v. INS*, 64 F. 3d 460, 463 (9th Cir. 1995) held that political unrest in the country of origin should be considered in the hardship assessment. Counsel distinguishes the applicant from the respondent in *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984) and in *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), by stating that in *Ngai* the applicant had a criminal record, was gainfully employed in Hong Kong, had been separated from her husband for 28 years, and had four grown children. She states that [redacted] is of good moral character, lives with her husband and has never been apart from him since their marriage, and wants to have children. Counsel states that in *Matter of Shaughnessy* the respondent had a criminal record and claimed hardship to his parents, who were employed; whereas here, counsel states that [redacted] does not have a criminal record and her husband has glaucoma. Counsel states that the applicant would be unemployed in Haiti, the poorest country in the western hemisphere, and where human rights violations are widespread. She states that the applicant and her husband have family ties to the United States. Counsel conveys that the [redacted] are investigating in-vitro fertilization to have children and medical facilities in Haiti that provide this care are only for the rich; she states that their hope of having a child would be lost. Counsel states that [redacted] has glaucoma and fears blindness and an inability to work in the future and the applicant's presence alleviates some of his fears. Counsel states that the applicant has shown that financial

hardship would exist if the waiver application were denied; she has been gainfully employed, contributing to her husband's education and to their household, and her income would be needed if [redacted] loses his vision. Counsel states that the applicant has a close emotional relationship with her husband and because of their age, their desire to have a child could be viewed as their mission in life and should carry great weight in assessing hardship.
The AAO has carefully considered all of the evidence in the record of proceeding in rendering this decision.

Extreme hardship to the qualifying relative must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"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).

The record fails to establish that the applicant's husband would experience extreme hardship if he remained in the United States without his wife.

Although counsel asserts that [redacted] will experience financial hardship without his wife's assistance, no documentation has been presented of [redacted] household expenses so as to show that his income is insufficient to meet his expenses. Going on record without supporting documentary evidence is not sufficient for the purpose 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)).

U.S. 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, 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. As stated in *Perez v. INS,* 96 F.3d 390 (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; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record reflects that [redacted] is concerned about separation from his wife and their inability to have children if she returns to Haiti. It is noted that except for [redacted]s affidavit, the applicant has submitted no medical records or other information to establish they are pursuing fertility treatments. Going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The AAO is 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 [redacted], if he remains 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 defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez, Sullivan, supra.*

The letter from the physician about [redacted]s glaucoma indicates that he has "very severe primary open angle glaucoma." But this does not convey that he will lose his vision, thus, it does not support counsel's assertion that [redacted]n would need his wife's income if he lost his sight.

The present record is sufficient to establish that the applicant's husband would endure extreme hardship if he joined her in Haiti.

The conditions in Haiti, the country where [redacted] would live if he joins his wife, 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 AAO finds that the submitted documentation reflects that [redacted] is receiving medical treatment for "very severe open angle glaucoma," and that he may not receive or be able to afford proper medical treatment and care for glaucoma in Haiti. That, combined with the political and economic situation in Haiti, cumulatively rise to the level of extreme hardship.

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.

The applicant has established that husband would experience extreme hardship if he were to join her in Haiti. However, 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 not been met so as to warrant a finding of extreme hardship to the applicant's husband if he were to remain 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 212(i) of the Act, 8 U.S.C. § 1182(i).

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, 8 U.S.C. § 1182(i), 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.