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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: NOV 05 2007

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 Interim Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [redacted] 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 is married to [redacted] who is a nationalized citizen of the United States. [redacted] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Interim Director denied, finding that [redacted] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Interim Director, dated September 1, 2005.*

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the 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.

The record reflects that the applicant misrepresented a material fact by presenting a fraudulent passport (photographs had been substituted) to immigration officials so as to gain entry into the United States. Based on the evidence in the record, the Interim Director was correct in finding the applicant inadmissible under Section 212(a)(6)(C) of the Act.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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 the present case is [redacted] 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).

On appeal, counsel states that [redacted]s family members all live in the New York area. She states that [redacted] immigrated to the United States ten years ago and has not maintained any friendships with persons from his hometown or country; and if forced to leave the United States, he would abandon his family, friends, and employment here. Counsel states that without contacts in Guyana [redacted] would be unable to find gainful employment there and that his wife would also be unemployed. Counsel states that Mr. [redacted] has been receiving medical treatment, has relied on his wife for support and assistance, and fears that he will not find competent medical care in Guyana. Counsel asserts that *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) indicates that a waiver provides family unification.

Extreme hardship to the applicant's husband 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 affidavit of the applicant's husband states that he has a close and special relationship with his wife, who manages their home and comforts and supports him. He states that Guyana has floods and that neither he nor his wife would find employment there.

The report by [redacted] states that [redacted] and his immediate family members, who are legal residents of the United States, value family cohesion. [redacted]r states that the applicant provides physical and emotional care and love for her husband. He states that the [redacted] fear losing their healthcare, work, education, family, and friends if they leave the United States. He states that the [redacted] do not wish to return to Guyana, where they experienced violence, prejudice, and economic devastation. [redacted] indicates that the applicant's father-in-law states indicates that his wife has diabetes, high blood pressure, and wears a prosthetic leg; and that his wife has a home health aide for two days of the week and spends at least two days each week with his son and daughter-in-law. [redacted] states that the applicant's husband states that his mother has functional limitations and requires assistance to bathe, toilet, cook, and shop; that he

provides some financial assistance to his parents; that his parents have been depressed since their daughter's murder in 2005; and that he and the applicant have taken his deceased sister's children into their home. In his report, [redacted] conveys the statements of members of the [redacted] indicates that the applicant and her husband exhibit major depressive disorder.

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

With regard to the submitted report from [redacted] although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between Mr. [redacted] The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the major depressive disorder suffered by the applicant and her spouse. Moreover, the conclusions reached in the submitted report, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Courts in the United States 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 BIA's 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.

In his report, [redacted] conveys that the [redacted] state that the applicant assists her husband in caring for his mother and the children of his deceased sister. However, the record contains no independent documentation which shows that [redacted] and his wife have taken on the responsibility of raising the children of his deceased sister. 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)).

[redacted] mother has health problems, as shown by the submitted medical record (Visiting Nurse Service of New York), dated June 19, 2005. However, this document does not convey that she will require permanent ongoing personal care after her discharge from the hospital.

[redacted] is very concerned about separation from his wife. 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 [redacted], if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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,* and *Sullivan, supra.*

The present record is insufficient to establish that [redacted] would endure extreme hardship if he joined his wife in Guyana.

The conditions in Guyana, the country where the applicant's husband would live if he joined her, 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 is not persuaded that extreme hardship has been established to [redacted] on account of his concern about his safety and that of his wife in Guyana. The record contains no documentation that it would be unsafe for [redacted] and his wife to live in Guyana. 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)).

Counsel states that the [redacted] fear that they will not find competent medical care in Guyana. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The submitted medical records pertaining to [redacted] are not sufficient to establish that he has a serious health condition for which medical treatment is unavailable in Guyana.

The AAO finds that counsel's assertion, that the [redacted] would be unable to find gainful employment in Guyana, is not sufficient to establish extreme hardship to [redacted] In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA determined that the claim of difficulty in finding employment and inability to find employment in one's trade or profession, although a relevant factor, is not sufficient to justify a grant of relief in the absence of other substantial equities. *Id.* at 631. In *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985), the court held that the loss on sale of a home and loss of present employment and its benefits did not constitute extreme hardship, but were normal occurrences of deportation. Moreover, in *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) the court held that difficulty in obtaining employment is not extreme hardship.

With regard to [redacted] separation from immediate family in the United States, courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that courts have upheld BIA orders

that resulted in the separation of aliens from members of their families in *Amezquita-Soto v. INS,* 708 F.2d 898, 902 (3d Cir.1983) (finding that neither petitioner nor his daughter would suffer extreme hardship if the petitioner were deported because the grandmother had raised and could care for the child); *Guadarrama-Rogel v. INS,* 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); *Banks, supra* at *763* (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Noel v. Chapman,* 508 F.2d 1023, 1027-28 (2d Cir.), *cert. denied,* 423 U.S. 824, 96 S.Ct. 37, 46 L.Ed.2d 40 (1975). In *Dill v. INS,* 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The record before the AAO is insufficient to show that the emotional hardship, which will be endured by [redacted] if he is separated from his mother, father, and siblings, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, Amezquita-Soto, Guadarrama-Rogel, Banks, Noel, and Dill, supra,* finding separation of family does not constitute 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.

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. 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, 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.