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Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ST. PAUL, MN Date: APR 0 6 2009

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.

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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, 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 sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain in the United States with her spouse, who is naturalized citizen of the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 21, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which 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 chapter is inadmissible.

The record reflects that the applicant admitted to purchasing a visa from a man she met in Guyana. She indicated that she gave the man her passport and $8,000 USA and he provided her with a visa and airline tickets. On August 24, 1999, the applicant procured admission into the United States by presenting to an immigration inspector her passport and fraudulent visa. In light of her material misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel states, in part, that the applicant's husband and son, as demonstrated by their psychological evaluations, would experience extreme hardship if the waiver application were denied. Counsel states that the applicant's son has missed school as a result of his mother's immigration situation. Counsel states that the applicant's husband and son would experience extreme hardship if they join the applicant in Guyana, given that the U.S. State Department indicates that Guyana has serious crimes and a murder rate that is three times higher than that of the United States, has low wages, and has tropical diseases. He states that the applicant's husband would not be able to raise his teenage son without the applicant and that they have no relatives in Guyana.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in

> the case of an immigrant 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 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, 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 who is a naturalized citizen of the United States. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Extreme hardship to the applicant's husband must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins her to live in Guyana. 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).

In support of the waiver application, the record contains, in addition to other documents, two psychological evaluations, financial records, employment letters, a Consular Information Sheet, a document about countries in tropical South America by the Department of Health and Human Services, Centers of Disease Control and Prevention, and an article about crime in Guyana, and statements from the applicant's spouse and son.
In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The record does not demonstrate, nor does the applicant assert, that her husband would experience extreme financial hardship if he were to remain in the United States without her. The AAO notes that the psychological evaluation by [redacted] indicates that applicant's husband provides the sole financial support for the family, working two jobs, and the applicant maintains the household and takes care of their son.

In their declarations, the applicant's spouse and son convey that they have a close relationship with the applicant. Her husband states that he has had an intimate relationship with his wife for over 18 years, and that he cannot imagine raising his son alone. The psychological evaluation by[redacted] of the applicant's husband conveys that he is "experiencing mild symptoms of anxiety including poor concentration, sleep disturbance and feeling "stressed out," and if the applicant were deported, her husband "would likely experience significant grief and anxiety." The psychological report by [redacted] states that the applicant's son's "present emotional state, poor as it is at present, could easily develop into one of major depression." She states that the applicant's husband has an "obvious state of agitation," which could "easily deteriorate; he could develop a severe anxiety disorder or clinical depression or both."

With regard to the evaluations by [redacted] and [redacted], although the input of a mental health professional is respected and valuable, the AAO notes that each of the submitted evaluations is based on a single interview between the applicant's spouse and [redacted] and [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 anxiety experienced by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluations, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the findings of [redacted] and [redacted] speculative and diminishing the evaluation's value to a determination of extreme hardship.

Although hardship to the applicant's son is not a consideration under section 212(i) of the Act, it will be considered here to the extent that it results in hardship to the applicant's husband. The AAO finds that the evaluation of the applicant's son, being based on a single interview with [redacted] has the same deficiencies as the psychological evaluations of his father described above.

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. *Id.* 1050-1051. As stated in *Perez v. INS,* 96 F.3d 390, 392 (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.

The applicant conveys that he is anxious about separation from his wife and how it will impact their teenage son. The AAO is mindful of and sympathetic to the emotional hardship, as expressed by the applicant's spouse, that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant's husband, if he remains in the United States without her, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

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 the applicant's spouse if he were to remain in the United States without her.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant 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 applicant's husband indicates that wages are low in Guyana and counsel states that Guyana has tropical diseases and a high crime rate.

Administrative and judicial decisions have consistently held that difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (difficulty

in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

With regard to Guyana's crime rate, the submitted article and country report on Guyana are not sufficient to show that violence in Guyana is so widespread that the applicant's and her family's life would be in danger there. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS,* 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). 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).

Even though Guyana has tropical diseases, this would not establish extreme hardship to the applicant's family given that the applicant and her husband and son lived in Guyana for many years and they have not indicated that they contract a serious illness while there.

The totality of the hardship factors fail to demonstrate that the applicant's husband would experience extreme hardship if he were to join his wife to live in Guyana.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.