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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK, NY Date: AUG 06 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (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, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having attempted to enter the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a lawful permanent resident mother. He seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to remain in the United States with his family.

The district director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were to be removed from the United States and, further, that a favorable exercise of discretion was not warranted in the applicant's case. She denied the application accordingly. *Decision of the District Director*, dated April 2, 2009.

On appeal, counsel states that U.S. Citizenship and Immigration Services (USCIS) failed to consider all the factors in denying the Form I-601, Application for Waiver of Ground of Excludability. *Form I-290B, Notice of Appeal or Motion*, dated May 1, 2009.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> . . .
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –
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> . . .
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> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the

> Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

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.

The record indicates that on March 2, 1999, the applicant attempted to enter the U.S. Virgin Islands with a photo-substituted passport and B-2 visa. On August 24, 2005, the applicant was convicted of False Use of Entry Document under 18 U.S.C. § 1546(a) and Failure to Appear under 18 U.S.C. § 1346. In that the applicant attempted to enter the United States using a fraudulent document, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking entry through fraud or the willful misrepresentation of a material fact. The applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his conviction for false use of an entry document under 18 U.S.C. § 1546(a), a crime involving moral turpitude. *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). The applicant does not contest these findings.

Sections 212(h) and (i) of the Act provide that waivers of the bars to admission resulting from inadmissibilities under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Act are dependent first upon a showing that the bars impose an extreme hardship on a qualifying family member. In the present case, the applicant's qualifying relatives are his U.S. citizen spouse and his lawful permanent resident mother. Hardships the applicant or other family members experience as a result of separation are not considered in section 212(h) and section(i) waiver proceedings, except as they would affect the applicant's qualifying relatives. Should extreme hardship be 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of

each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

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. Accordingly, if the applicant is to establish extreme hardship to a qualify relative, the record must distinguish the hardships that would be experienced by his spouse and/or mother as a result of his inadmissibility from those commonly associated with the exclusion or removal of a close family member.

The AAO notes that extreme hardship to the applicant's spouse and/or mother must be demonstrated whether they reside in Guyana or remain in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request.

The record includes the following evidence to establish the applicant's claim that both his spouse and his mother would experience extreme hardship if he is found to be inadmissible to the United States: statements from the applicant's spouse, mother, mother-in-law, brother, brother-in-law, future sister-in-law and friends; a psychological evaluation of the applicant and his spouse; a mental health history and a pre-sentence investigation report relating to the applicant; financial documentation, including Form W-2s and pay stubs for the applicant and his spouse, tax returns,

credit card statements, utility bills and bank statements; employment letters for the applicant and his spouse; health insurance cards; medical documentation relating to the applicant, his spouse and his mother; country conditions materials on Guyana and printed materials on eating disorders and angina.

Prior to addressing the applicant's eligibility for waivers of inadmissibility under section 212(h) and 212(i) of the Act, the AAO will respond to counsel's assertion that the district director erred in failing to consider all of the factors noted in *Matter of Cervantes* in reaching her decision regarding extreme hardship. It notes that USCIS is not required to consider all hardship factors in reaching an extreme hardship decision. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the Supreme Court held that the Attorney General, now the Secretary of Homeland Security, and his delegates have the authority to construe extreme hardship narrowly and that such a narrow interpretation is consistent with the extreme hardship language, which indicates the exceptional nature of the suspension remedy. Accordingly, the district director did not err in her consideration of the hardship factors raised in the applicant's waiver application.

The AAO now turns to a consideration of the applicant's claim to extreme hardship.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to his spouse and/or mother in the event that they relocate to Guyana. In her brief, counsel asserts that country conditions in Guyana preclude the relocation of the applicant's spouse and points to Guyana's substandard minimum wage, unlawful killings by Guyanese police and the widespread violence against women. Counsel also asserts that the applicant's mother-in-law is dependent on him and her daughter for her care following foot surgery.

The applicant's spouse, in an affidavit of October 12, 2007, states that the high rate of unemployment in Guyana would prevent her from finding a good job. She also asserts that the applicant's life is still at risk in Guyana and that, as a result, hers could be as well. The applicant's spouse states that her parents, brother, sister, cousins, aunts and uncles live in the New York metropolitan area and that it would be very difficult for her to be separated from them. The applicant, in a second October 12, 2007 affidavit, states that his spouse is the oldest child in her family, has always helped her mother take care of the household and also assists her father in running the family business. He contends that she is the "right hand" of her family and that without her they would suffer greatly. The applicant also contends that Guyana would not be a safe place for his spouse to live, as they would be threatened by the same individuals who beat him in 1998 and killed his father in 2000. He further states that, in Guyana, people who come from the United States are targeted and robbed, kidnapped and murdered. His spouse, the applicant asserts, would also have to leave behind the business they have recently opened and that, in Guyana, it is rare that women work outside the home, much less run a business. The applicant's mother-in-law, in a March 25, 2009 statement, reports that she recently underwent reconstructive foot surgery and is still recovering. She states that she is unable to walk and depends on the applicant and her daughter to take her to her doctors' and therapy appointments.

While the AAO acknowledges that the applicant's spouse would experience hardship if she were to be separated from her family in the United States, it does not find the record to distinguish her hardship from that commonly suffered by individuals separated from family members as a result of relocation. It notes that the record contains a psychological evaluation of the applicant's spouse conducted by [redacted], a psychologist and licensed clinical social worker, and that [redacted] finds the applicant's spouse's health and development to require a safe, healthy, predictable and loving environment with both the applicant and her parents. According to [redacted], the applicant's spouse's family is her community. He further reports that the applicant's spouse has serious, on-going psychiatric issues that include an eating disorder, depression, anxiety and phobias, and that her conditions require attention and care within a competent healthcare system.

The record does not establish that the applicant's spouse's health and development are dependent on the presence of both her spouse and parents. The record contains an October 12, 2007 letter from [redacted] North Shore-Long Island Jewish Health System, which states that he has been treating the applicant's spouse for metabolic syndrome, a weight-related disorder, since May 2000 and that she has been instructed to see a dietician for weight management. A March 26, 2009 letter from [redacted], Nutritional Director, Eating Disorder Associates, reports that the applicant's spouse is being treated for an eating disorder. Neither letter addresses the environment required for successful treatment of the applicant's spouse's condition or whether that environment must include her parents. Although [redacted] also finds that the applicant's spouse has serious, on-going psychiatric issues beyond her eating disorder, the AAO notes that these diagnoses are based on a single interview with applicant's spouse and that the record contains no other documentary evidence indicating that the applicant's spouse's has a history of mental health issues. Accordingly, while the input of any mental health professional is respected and valuable, the AAO finds [redacted] conclusions, as they are based on only one interview with the applicant's spouse, to be speculative and, therefore, of diminished value to a determination of extreme hardship.

The country conditions materials in the record indicate that medical care in Guyana is not comparable to that in the United States and, further, that emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below-standard hospital care and poor sanitation. However, the record does not establish that the applicant's spouse suffers from a major medical illness requiring emergency care or hospitalization. It documents only that the applicant's spouse suffers from an eating disorder and is receiving treatment. While the AAO acknowledges that eating disorders represent potentially serious health problems, the record does not include medical documentation that indicates the severity of the applicant's spouse's eating disorder, how it affects her ability to function on a daily basis or the specific treatment she is receiving. It, therefore, does not demonstrate that the applicant's spouse's treatment for her eating disorder would require her to remain in the United States or that she could not receive medical assistance in Guyana to manage her weight. Accordingly, the AAO does not find the record to demonstrate that relocation would result in extreme hardship to the applicant's spouse based on her mental or physical health.

In support of his claim regarding conditions in Guyana, the applicant has provided the section on Guyana from the 2008 Country Reports on Human Rights Practices – 2008, published by the

Department of State on February 25, 2009, as well as the Background Note on Guyana and Country Specific Information on Guyana, also issued by the Department of State. The AAO also notes that the psychological evaluation prepared by [redacted] reports the applicant's history in Guyana and finds him to suffer from Post Traumatic Stress Disorder, as well as chronic anxiety and depression, as a result of that history. The record also indicates that the applicant has a pending asylum claim based on the attack made on him in 1998 and the subsequent fatal beating of his father, and includes documentation in support of that application, e.g., medical records that establish that the applicant was treated for three beatings sustained in 1998, that his father died from a beating in 2000 and that the injuries sustained by the applicant in 1998 continue to affect him, e.g., headaches and vertigo.

The AAO finds the submitted country conditions information to establish that the legal minimum wage in Guyana does not provide a decent standard of living for a worker and his or her family. However, it does not find the record to demonstrate that the applicant's spouse would be limited to employment paying the minimum wage or that, as a woman, her employment opportunities would be limited. The record also fails to document that the applicant's spouse would be a likely victim of robbery, kidnapping or murder if she moved to Guyana. While country conditions materials indicate that serious crime is a major problem in Guyana and advise U.S. travelers against visiting the village of Buxton and Agricola or certain locations in Georgetown, they do not establish that the U.S. citizenship of the applicant's spouse would place her at particular risk if she moved with the applicant to Guyana. With regard to the applicant's claim that he continues to be at risk in Guyana from the same individuals who beat him and that his spouse would share that risk if she relocated, the record does not contain sufficient documentation for the AAO to conclude that the individuals who attacked the applicant in 1998 continue to pose a threat to him and his spouse in 2009. The AAO acknowledges that the applicant has a pending asylum application, but notes that the filing of an asylum application is not proof that the applicant would be at risk if he returned to Guyana.

The psychological evaluation of the applicant performed by [redacted] finds him to be suffering from Post Traumatic Stress Disorder, as well as depression and anxiety, as a result of his experiences in Guyana. This same diagnosis was reached by the psychologist who prepared a mental health history of the applicant for the Federal Bureau of Prisons on July 21, 2005. While the AAO acknowledges this diagnosis, the applicant, as previously discussed, is not a qualifying relative in this proceeding and the record does not address how his mental health problems or the continuing effects of the beatings he suffered in 1998 would affect his spouse if they were to relocate to Guyana.

The record includes a February 27, 2009 letter from [redacted] Chief, Foot and Ankle Service, The Hospital for Special Surgery in New York that establishes the applicant's mother-in-law underwent foot surgery on November 1, 2008. [redacted] states that, as a result of the extensive nature of her surgery, the applicant's mother-in-law requires assistance with her daily activities and depends on her daughter and the applicant for that assistance. He concludes that it would result in great hardship to the applicant's mother-in-law if she were to lose the support and assistance of the applicant during a crucial time in her postoperative recovery. Although the AAO accepts Dr. [redacted]s assessment of the impact of the applicant's removal on his patient, it again notes that the applicant's mother-in-law is not a qualifying relative in this proceeding and that the record fails to

address how the impact on her health would affect her daughter, the applicant's spouse. Having considered the preceding factors, individually and in the aggregate, the AAO finds the record to lack sufficient evidence to establish that the applicant's spouse would suffer extreme hardship if she moved to Guyana with the applicant.

The applicant may also qualify for a waiver of inadmissibility based on hardship suffered by his lawful permanent resident mother in Guyana. However, neither counsel nor the applicant address the impact of relocation on his mother and the AAO is, therefore, unable to find that she would suffer extreme hardship if she returned to Guyana with her son.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his waiver application is denied and his spouse and/or mother remain in the United States. On appeal, counsel for the applicant states that the applicant's spouse suffers from anxiety and depression, as well as an eating disorder. She asserts that an eating disorder is a real medical illness with complex underlying physiological and biological causes. The applicant's spouse, in her affidavit of October 12, 2007, states that she depends on the applicant to help her with her eating disorder and that it has been his emotional support and patience that have given her the strength to control her binge eating. She states that her recovery will be a long process. She further asserts that she would be unable to heal in the applicant's absence and that his removal would be physically devastating. The applicant's spouse also states that, in 2005, she opened her own business and relies on the applicant's mechanical and hands-on experience to help her run it. Without him, the applicant's spouse asserts, she would be forced to close her company and would lose the money she has invested in it.

As previously discussed, the record contains a psychological evaluation of the applicant's spouse conducted by [redacted] and medical statements that establish that she suffers from an eating disorder. However, none of these documents demonstrate that the removal of the applicant would adversely affect his spouse's health. Although [redacted] finds that the applicant's spouse, in addition to an eating disorder, suffers from major depressive disorder, panic attacks and generalized anxiety disorder, and that she cannot cope without the applicant's everyday assistance, the AAO again notes that these diagnoses are based on a single interview. In the absence of any corroborating documentary evidence, the evaluation's conclusions must be viewed as speculative and are, therefore, of limited value in assessing the applicant's claim to extreme hardship. Further, as previously discussed, the medical letters that establish the applicant's spouse's eating disorder fail to indicate the severity of her condition, the extent to which her eating disorder limits her ability to function, that successful treatment is dependent on the support of her spouse or that the applicant is playing a role in her treatment or recovery.

While the AAO notes the applicant's spouse's claims regarding her dependence on the applicant in her new business, it does not find the record to establish that she has opened her own business or that the applicant works in that business. The record does not contain any documentation relating to the 2005 start-up of the applicant's spouse's business or the amount of capital that the applicant's spouse has invested in it. Instead, the AAO notes that the record contains employment letters, dated as recently as March 25, 2009, that indicate the applicant and his spouse continue to be employed by

the Homeric Contracting Co., Inc. When looking at the preceding factors, whether individually or in the aggregate, the AAO does not find the record to demonstrate that the applicant's spouse would experience extreme hardship if he were to be removed and she remained in the United States.

Counsel claims that the applicant's lawful permanent mother would also experience extreme hardship if she were to be separated from the applicant. She notes that, although the applicant's mother's primary residence is in Florida with one of the applicant's sisters, she spends the summer months with the applicant and his spouse, and is financially dependent on them. Counsel also contends that the applicant's mother suffers from both depression and angina as a result of her concern that the applicant may be returned to Guyana. The applicant's mother, in a March 26, 2009 statement, contends that, if the applicant were to be removed to Guyana, he would be killed by the men who attacked him in 1998. She reports that her concerns prevent her from sleeping, eating, reading or even listening and that she feels as though she cannot breathe. The applicant's mother states that she has been diagnosed with angina and that a doctor has informed her that she must decrease her level of stress or run the risk of heart attack or stroke. The applicant's mother also states that she relies almost entirely on the applicant for her financial needs and that she receives only food and shelter from the daughter with whom she lives during the winter months.

The record contains a March 26, 2009 letter from [redacted] that establishes that the applicant's mother suffers from angina. [redacted] states that the applicant helps to care for his mother financially and emotionally, and that her condition has worsened since the applicant's detention. [redacted] indicates that the applicant's mother's angina episodes have increased making it difficult for her to sleep and resulting in shortness of breath, palpitations and pain. [redacted] states that in light of his mother's health, it is necessary for the applicant to be at home with her. Included in the record is an online article on angina published by the Mayo Clinic that reports that an individual's response to stress can increase the risk of angina and heart attacks. The record does not include documentation that establishes that the applicant's mother suffers from any mental health condition or is financially dependent on the applicant, as claimed by counsel. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the record's documentation of the applicant's mother's medical condition and the worsening of her health following his detention, the AAO finds that the applicant has established that his mother would suffer extreme hardship if he were to be removed and she remained in the United States without him. However, as the record does not also establish that the applicant's mother would experience extreme hardship upon relocation to Guyana, the applicant has failed to establish that she would suffer extreme hardship based on his inadmissibility. 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. Accordingly, the AAO will not address counsel's concerns regarding the district director's exercise of discretion in this matter.

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.