U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 19 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

On May 12, 2006, the director denied the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) based on the applicant's inadmissibility and found that the applicant did not have a qualifying relative. *Decision of the Director*, dated May 12, 2006. The applicant filed a motion to reopen and submitted, for the first time, an Application for Waiver of Grounds of Inadmissibility (Form I-601). The Director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Director*, dated November 14, 2006. The Director also denied the applicant's motion to reopen after finding the applicant did not state new facts or evidence. *Id.*

On appeal, counsel contends that the applicant met her burden of proving that her husband would suffer extreme hardship if her waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on December 30, 2000; copies of an explanation of benefits from the applicant's health insurance company; two letters from [redacted] doctor; two letters from a hospital verifying [redacted] hospital stays; financial and tax documents; background materials addressing country conditions in Haiti; and a copy of the decision by the Immigration Judge. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that she attempted to enter the United States in June 1989 using a fraudulent name, [redacted] and fraudulent passport. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 182(a)(6)(C)(i), for having attempting to enter the United States by fraud or willful misrepresentation.

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. *See* section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

According to counsel, the applicant has met her burden of establishing extreme hardship based on her husband's various health problems. A letter from [redacted] physician states that [redacted] is under treatment for hypertension and "Right Hemiplegia due to 3 previous strokes." *Letter from Dr.* [redacted], dated December 12, 2006; *see also Letter from* [redacted], dated July 1, 2006. Mr. [redacted] doctor states that [redacted] "is not able to work due to the right hemiplegia . . . and due to his very severe hypertension he may bleed again. He needs help at home all the time." *Letter from* [redacted] dated December 12, 2006. In addition, documentation in the record indicates [redacted] was hospitalized from June 2, 2005, until June 9, 2005, and again from June 9, 2006, until June 23, 2006.

Significantly, there are no statements, affidavits, or letters in the record from either the applicant or Mr. [redacted]. Although the medical documentation in the record shows that [redacted] has health conditions which render him unable to work and requiring assistance, without any statements from the applicant or her husband, it is unclear whether the hardship he would experience if the applicant's waiver application were denied rises to the level of extreme hardship. The letters from [redacted] doctor do not indicate [redacted] prognosis, nor do they indicate whether the conditions are permanent, or what his treatment entails. Although the doctor states [redacted] "needs help at home all the time," there is no elaboration, explanation, or description regarding how his health conditions affect his daily life and how, specifically, he requires his wife's assistance.

Similarly, the documents in the record indicating the dates [redacted] was hospitalized are insufficiently detailed. There is no indication why [redacted] was hospitalized for several days in June 2005, and again one year later in June 2006. It is unclear whether these hospitalizations were for the strokes the doctor references in his letter, whether they were related to [redacted]' hypertension, or whether they were for another reason altogether. Although counsel asserts that [redacted] was hospitalized on account of hypertension and three strokes, *Brief in Support of Form I-290B,* dated December 14, 2006, at 4, counsel's assertion is unsupported by the record evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) (the unsupported assertions of counsel do not constitute evidence); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983) (same); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (same).

Moreover, counsel's contention that [redacted] is "physically immobile, house-ridden, and in constant need of physical and emotional attention at the home he shares solely with his wife[, and n]obody but the Applicant is able to provide that help," *Brief in Support of Form I-290B, supra,* is also unsupported by the record evidence. Without statements from the applicant, her husband, or anyone else, there is no evidence [redacted] is immobile, unable to leave the house, and has no one other than the applicant to help him. Likewise, counsel's assertion that [redacted] is "wholly dependent on the Applicant for financial support," *Brief in Support of Form I-290B, supra,* at 4-5, is also unsupported by the record. As counsel himself contends, [redacted] receives disability payments and there are no statements from either the applicant or her husband describing their financial situation. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the AAO recognizes that [redacted] will suffer hardship as a result of his wife's waiver application being denied and is sympathetic to their circumstances, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.