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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: BOSTON, MA Date: MAY 04 2009

IN RE: [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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uganda 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse and child. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 3, dated March 26, 2008.

On appeal, counsel asserts that the field office director erred in finding that the applicant had not established that his spouse would suffer extreme hardship, and that the field office director's reference to two of the applicant's spouse's statements did not constitute consideration of her hardship. *Form I-290B*, at 2, received April 25, 2008.

The record includes, but is not limited to, counsel's brief, country conditions information on Uganda and the applicant's spouse's statement.

Counsel requests that the AAO remand this matter to the field office director in order to provide the applicant with the purported derogatory information on which she based her decision and a reasonable opportunity to respond. *Brief in Support of Appeal*, at 3, dated May 22, 2008. The AAO notes counsel's concerns and does not find the record to reflect that the applicant was provided with the full range of derogatory information that formed the basis for his inadmissibility to the United States prior to the issuance of the field office director's decisions, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). It finds, however, that the remedy for this procedural error has been provided by the appeals process, which has offered the applicant the opportunity to rebut the findings of the field office director concerning his history. Therefore, the AAO will adjudicate the appeal.

The record reflects and the applicant acknowledges that on July 14, 1999, he was admitted to the United States with a visa and passport in another person's name. As a result of this single misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.[1]

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[1] The AAO will not address whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude as referenced by the field office director in the I-485 denial, as his eligibility for a section 212(i) waiver would also render him eligible for a section 212(h) waiver of section 212(a)(2)(A)(i)(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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion.[2] *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

Counsel asserts that the applicant's case is distinguishable from *Matter of Cervantes-Gonzales* and that the field office director failed to consider all of the hardships presented. *Brief in Support of Appeal,* at 19-20. The AAO notes that an applicant who has a stronger hardship claim than the

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[2] The field office director references the applicant's negative factors and the consideration of after-acquired equities in her I-601 decision. The AAO observes, however, that negative factors and after-acquired equities are not part of the extreme hardship analysis. As noted above, such factors are considered only after a determination of extreme hardship has been made.

respondent in *Matter of Cervantes-Gonzales* does not necessarily establish that he or she would suffer extreme hardship. With regard to counsel's assertions that the field office director analyzed the applicant's hardships individually as opposed to cumulatively, the AAO finds the record to reflect that the field office director's references to specific hardships in her decision were intended to establish the definition of extreme hardship and that she was not addressing individual aspects of the applicant's claim. The AAO will now evaluate the hardships presented in the applicant's case in order to determine whether extreme hardship has been established.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Uganda or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Uganda. Counsel states that social customs in certain parts of Uganda require women and girls to undergo female genital mutilation (FGM), the applicant's daughter would be in danger of this happening to her, and the applicant's spouse would have to endure the rational fear of violent crimes, kidnapping of U.S. citizens, poverty and disease. *Brief in Support of Appeal*, at 17. The record does not include evidence that the applicant's family would reside in the areas of Uganda where FGM is practiced or that FGM is practiced against U.S. citizens living in Uganda. Counsel states that the applicant's spouse has no relatives in Uganda. *Id.* at 19. The applicant's spouse states that she is tied to the United States by her six U.S. citizen daughters and family obligations, five of her daughters would not be able to go to Uganda because their fathers would not grant her custody to take them there, no one is there to help them in Uganda and she only speaks English. *Applicant's Spouse's Statement*, at 1, dated March 23, 2005. The AAO notes that the record does not establish the existence (i.e. birth certificates, etc.) of the applicant's spouse's children, other than her child with the applicant, and does not include evidence of their custody arrangements. The record indicates that the applicant's parents reside in Uganda. *Applicant's Form G-325A, Biographic Information*, undated. There is no evidence that they cannot assist the applicant and his spouse. In addition, the record reflects that English is the official language of Uganda. *See CIA World Factbook; https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html* (Updated April 23, 2009). Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). Although the AAO acknowledges that the applicant's spouse would encounter difficulties if she relocated to Uganda, the record contains insufficient evidence to establish that she would suffer extreme hardship as a result of her relocation.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse could not remain in the United States as it would effectively end her marriage and that the applicant is financially responsible for the family. *Brief in Support of Appeal*, at 15-16. Counsel states that the applicant's spouse is unemployed and lacks substantial job skills; she would be forced to support herself alone, including the care of six U.S citizen children and one grandchild; she would likely need to rely on public assistance; and she would have to endure witnessing the applicant being subject to dire

poverty and physical harm. *Id.* at 18. The applicant's spouse states that the applicant is essential to the development of her children, it would be devastating to watch them grow up without the applicant, he has been a constant male figure in their lives, raising six girls as a single mother would be an overwhelming task, the applicant is the sole provider for the family, she would have to seek public assistance without the applicant, she could not work because she could not afford daycare, and she and the applicant are extremely close and emotionally dependent on each other. *Applicant's Spouse's Statement*, at 1-2. As mentioned previously, the record does not include sufficient evidence (i.e. birth certificates, etc.) to establish the existence of five of the applicant's spouse's children. While the applicant's spouse claims she would be emotionally devastated regarding her children and fears for the applicant, no documentation is provided, e.g., psychological evaluation(s), to support her statement. In addition, the country conditions information submitted for the record is too general in nature to demonstrate that the applicant would be at risk in Uganda. While the applicant's spouse claims that the applicant is the sole financial provider for the six children, the tax returns in the record only list her and their daughter as his dependents. The AAO finds that the applicant has not established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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.

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 he merits a waiver as a matter of discretion. As such, the AAO will not address counsel's concerns regarding the field office director's weighing of the discretionary factors 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.