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

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[redacted]

FILE: [redacted] Office: MEXICO CITY (PANAMA CITY) Date: MAY 06 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:

SELF REPRESENTED

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, Mexico City, 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. On October 2, 2007, the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability, seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

On December 17, 2007, the district director issued a decision denying the application for waiver, concluding that the applicant has failed to establish that extreme hardship would be imposed on a qualifying relative should she be removed from the United States.

The applicant filed a Form I-290B, Notice of Appeal, on January 3, 2008. The applicant's spouse asserted on appeal that he would suffer extreme hardship if his wife is not allowed to join him in the United States. The applicant's spouse submitted a statement and additional evidence along with the Form I-290B and on several other dates since then.

The entire record was reviewed and considered in rendering this decision.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that, in 1996, the applicant was the beneficiary of an I-130 petition submitted on her behalf as the unmarried daughter of a United States citizen. In support of the I-130 petition, the applicant presented to

the United States Consulate in Guyana a birth certificate that was found to be fraudulent, and DNA testing later revealed that the petitioner of the I-130 in question was not the applicant's biological father. As the applicant had committed fraud in order to obtain entry into the United States, the director correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Once extreme hardship to a qualifying relative 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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.

> 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. courts have stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On her Form I-601, the applicant indicated that she is claiming eligibility for a waiver through her husband, [redacted], who is a citizen of the United States. Along with the Form I-601, the applicant submitted a letter from her husband, dated August 13, 2007. In the letter, [redacted] stated that the separation from the applicant is affecting him "tremendously, mentally and emotionally," as well as financially because he has to support himself in the United States as well as his family in Guyana. He further stated that the applicant's son, his stepson, needs him as a father. [redacted] later submitted a letter on November 30, 2007 stating that his hardship has increased as the applicant has become pregnant with their first child.

In denying the application for waiver of inadmissibility, the director concluded that the evidence failed to demonstrate that the applicant's husband would experience extreme hardship upon the applicant's removal from the United States. The director noted that although family ties and financial concerns can cause hardship, the evidence does not show that the hardship to the applicant's spouse rises to the level of extreme hardship.[1]

On appeal, the applicant's spouse submits a letter, dated December 28, 2007, stating that his requests for time off to go to Guyana and the strain of separation are affecting his job. He stated that because he is an electrical sub-contractor who works with live electrical circuits, the stress of the situation is a threat to his as well as others' safety. He further states that he is seeking a mental health evaluation and will submit a report. In addition, evidence submitted on appeal include: a number of itineraries and boarding passes documenting trips the applicant's husband has made to Guyana; a U.S. Department of State Consular Information Sheet on Guyana dated November 21, 2007; a copy of the U.S. passport of the applicant's spouse, and letters dated December 31, 2007 from Davis Memorial Hospital and Clinic in Georgetown, Guyana, confirming that the applicant was 19 weeks pregnant at the time and was admitted to the hospital on October 9-10, 2007.

The record also contains another letter from the applicant's spouse, dated February 1, 2008, in which he stated, among other things, that moving to Guyana is not an option for him as he is "well established in the United States and has a very good job," and "the crime situation in Guyana is very bad." The applicant's spouse also submitted additional evidence including

[1] It is noted that the director's decision states, "Another concern is the bona fides of your claimed marital relationship to the petitioner. You have failed to demonstrate the marriage between you and [redacted] is nothing more than a marriage on paper." The AAO notes that this finding is in error, as the name "[redacted]" has no bearing to this matter, nor is there any other indication in the record that the bona fides of the applicant's marriage is in question. This portion of the director's finding is therefore withdrawn.

photographs of the couple's wedding, receipts of Western Union money transfers from the applicant's spouse to the applicant in 2005 through 2008, news articles relating to actions by crime-related violence in Guyana in early 2008, and a U.S. Department of State Warning dated January 26, 2008 relating to actions by armed criminal elements in Guyana around that time.

Another letter dated September 17, 2008 from the applicant's spouse indicated that the applicant gave birth to a daughter in June 2008. That letter was accompanied by copies of the child's U.S. Consular Report of Birth Abroad and U.S. passport.

Most recently, the record includes a letter dated April 6, 2009 from the applicant's spouse, in which [redacted] indicated that his child has a "food disorder" for which she had to be taken to the emergency room on April 2, 2009. [redacted] asserted that his daughter needs to come to the United States for treatment and cannot come alone as she still breast feeds and shows no allergic reaction to breast milk. The applicant's spouse also submitted a letter from [redacted] stating the following regarding the applicant's infant daughter:

> [The patient] has a long history of allergy to food and medications. It has been very difficult to treat the common childhood disorders she has suffered during this period that require the use of anti-microbials and analgesics. Our local facilities provide limited scope for allergic screening. She is, therefore, recommended for further medical evaluation and treatment abroad.

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

The AAO recognizes that the applicant's spouse would suffer considerable hardship should his wife be barred from joining him in the United States. However, the evidence of record is insufficient to show that the hardship he suffers rises to the level of extreme hardship. The applicant's spouse claimed that he experiences financial difficulties, having to support himself in the United States and his wife and child in Guyana. While the record contains receipts for money transfers made periodically by the applicant's spouse to the applicant in Guyana, without more, such evidence is insufficient to demonstrate the extent to which sending funds to his wife would impact the finances of the applicant's spouse such that it might amount to extreme hardship. The applicant's spouse also claimed that the stress of separation from his wife poses a danger to his mental health, and thus to his overall safety on the job, and the safety of others. However, no evidence -- such as a mental health evaluation, record of treatment by a mental health professional, or evidence relating to his job performance -- has been submitted to show that support this claim. 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)).

The most recent letter from the applicant's spouse indicates that the couple now has a child who resides with the applicant in Guyana, and the applicant's spouse submits a letter from a physician stating that the child has food allergies is "recommended for further medical evaluation and treatment abroad." The evidence submitted is vague as to the exact nature of the child's medical problem, and it is unclear why the physician would refer to the child's ailment as "common childhood disorders" and yet maintain that treatment for such ailment could only be found outside of Guyana. In addition, the applicant's spouse claimed that the child had to be taken to the emergency room recently for treatment, but no documentation of that emergency room visit was provided, nor is it clear what problem prompted the need for treatment. Further, as previously noted, the applicant's child is not considered a qualifying relative for purposes of a waiver of inadmissibility under 212(a)(9)(B)(v) of the Act. Therefore, hardship to the applicant's child is not relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse, who is the qualifying relative in the application. Without further explanation and documentation relating to the child's medical condition, the evidence of record is not sufficient to demonstrate that the child is experiencing difficulties that would result in extreme hardship to the applicant's spouse, as required in connection with this waiver.

Moreover, while there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request, to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Guyana. In his letters, [redacted] has explicitly stated that "moving to Guyana is not an option" for him, as he has a very good job in the United States. However, without some documentary evidence of the lack of employment opportunities in Guyana for someone with his skills and experience, his statements are of little evidentiary value. Moreover, economic detriment, including the loss of employment and the inability to maintain a standard of living or to pursue a chosen profession, is not uncommon when individuals relocate outside the United States to join family members and, therefore, does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996). In addition, while the record contains some background information relating to criminal violence in Guyana in 2008, it is noted that the U.S. Department of State has no outstanding travel warnings or advisories relating to Guyana at this time.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's spouse will suffer as a result of separation from the applicant. However, based on the record, the AAO cannot conclude that the hardships he faces, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. 627 (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish 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. "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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.