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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

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[redacted]

FILE: [redacted] Office: LONDON Date: SEP 01 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i) and 1182(h)

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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), London. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of the United Kingdom. He was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II), 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), 1182(a)(6)(C)(i) and 1182(a)(2)(A)(i)(II) respectively. The applicant was found inadmissible under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. He was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud. He was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act as an alien who has been convicted of a crime involving a controlled substance. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v), 212(i) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i) and 1182(h) respectively, in order to return to the United States to join his United States citizen spouse, [redacted]

The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse is suffering extreme hardship due to the applicant's inadmissibility. As corroborating evidence, counsel submitted on behalf of the applicant's spouse, a psychological evaluation, medical documentation, an attestation of employment, and her passport. The record also contains letters from the applicant and his spouse, which were initially filed with the waiver application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C) of the Act 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 Act is inadmissible.

Section 212(i) of the Act provides:

(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(a)(2) of the Act states in pertinent part:

(A) Conviction of certain crimes. –

(i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled

> substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> (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 [Secretary] 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)(9)(B)(v), 212(i) and 212(h) of the Act waivers of the bar to admission, resulting from the respective violations of sections 212(a)(9)(B)(i)(II), 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(II) of the Act, are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon refusal of admission is irrelevant to section 212(a)(9)(B)(v), 212(i) and 212(h) waiver proceedings. 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).

In the present application, the record reflects that the applicant, a citizen of the United Kingdom, entered the United States under the terms of the Visa Waiver Program (VWP) on June 22, 2001 and remained in the United States until either July or August 2003. The VWP is for aliens applying for admission as nonimmigrant visitors for a period not exceeding 90 days. Section 217(a)(1) of the Act, 8 U.S.C. 1187(a)(1). The OIC correctly found that the applicant accrued over one year of unlawful presence during his period of residence in the United States. The applicant is attempting to seek admission into the United States within 10 years of his departure from the United States. The applicant has not disputed on appeal that he was unlawfully present in the United States as noted. The applicant is therefore inadmissible to the United States under section 212(a)(9)(B)(II) of the Act.

On appeal, counsel asserts that the OIC failed to provide any specific information regarding the applicant's misrepresentation of a material fact. The record reflects that on September 10, 2003, the applicant attempted to enter the United States at the Los Angeles Airport as a temporary nonimmigrant visitor for 90 days or less under the terms of the VWP. As stated, the record reflects

that the applicant had previously overstayed his admission as a nonimmigrant visitor and resided in the United States from June 22, 2001 until either July or August 2003. In applying for admission under the VWP, the applicant misrepresented himself as intending to reside in the United States as a temporary nonimmigrant visitor while, in fact, he had established residence in the United States. The AAO, therefore, affirms the OIC's finding that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts to procure admission to the United States.

Finally, the record reflects that on June 18, 2002, the applicant pled guilty to possession of not more than 28.5 grams of marijuana, and was ordered to pay a fine of $110.00 (Superior Court of California, County of San Bernardino, [redacted] The director correctly found the applicant inadmissible for a violation of a law relating to a controlled substance. The applicant does not dispute this finding on appeal. The applicant is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act as an alien who has been convicted of a crime involving marijuana, a controlled substance.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

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.

Counsel asserts that the applicant's spouse is depressed because of the stress and anxiety of living apart from the applicant. Counsel states that the applicant's spouse suffers from headaches, difficulty sleeping and digestive problems that cause her cramps, constipation, nausea and stomach aches. As corroborating evidence, counsel furnished a psychological evaluation from [redacted], dated April 20, 2007, and an outpatient gastroenterology consultation from [redacted], dated December 16, 2003.

The psychological evaluation reflects that [redacted] diagnosed the applicant's spouse with a single episode of major depressive disorder and recommended individual counseling as part of her treatment plan. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychiatrist. 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 major depressive disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychiatrist, thereby rendering the psychiatrist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The gastroenterology consultation from states that the applicant's spouse is suffering from abdominal pain. assessment and treatment plan provides, "The patient . . . likely has functional abdominal pain [sic] due to early satiety and weight loss I will order a small bowel follow through and CT of the abdomen. We will also check a CBC and ESR. . . . I will have her back in clinic in approximately two months." The applicant provided no other documentation related to the diagnosis, prognosis and treatment plan for his spouse's abdominal pain. It is reasonable to expect the applicant to provide additional information since he filed the appeal over three years after his spouse's initial consultation with [redacted] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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). Accordingly, the AAO cannot conclude that the applicant's spouse suffers from a medical condition that would contribute to a finding of extreme hardship.

Counsel asserts that the applicant's spouse has made numerous trips to the United Kingdom, rendering it impossible for her to continue going to school and find a permanent job in the United States. Counsel states that it is difficult for the applicant's spouse to take advantage of educational and employment opportunities in the United States without her husband's emotional and financial support. Counsel notes that the applicant's spouse is employed as a mail intake coordinator and earns $10 per hour. As corroborating evidence, counsel furnished an employment verification letter from North American Medical Management stating that the applicant's spouse is a mail intake coordinator and earns $10 per hour, and a copy of the applicant's passport reflecting her entries into the United Kingdom on July 29, 2004, August 21, 2004, July 8, 2005 and January 6, 2006.

The AAO recognizes that the refusal of the applicant's admission to the United States may cause economic detriment to his spouse. However, the applicant has not demonstrated financial hardship in this particular case. The applicant provided no evidence of where he was employed during his residence in the United States, his educational background and employment history. On the applicant's biographic information form (Form G-325), signed January 4, 2005, he listed his employment for the previous five years as "student." Furthermore, the applicant's spouse has not provided any documentation of her monthly income and expenses. The AAO notes that the applicant's spouse stated, in the letter she initially filed with the waiver application, that she is studying to become a Medical

Assistant. However, the record does not contain any documentation of her tuition fees, school expenses, and whether she is receiving any loans or financial aid. In addition, there is no indication of how the applicant's spouse paid for her airfare during her four visits to the United Kingdom between July 2004 and January 2006. [redacted] noted in his psychological evaluation that the applicant's spouse is residing with her parents, indicating that she may be receiving financial assistance from them. In sum, without a complete picture of the applicant's spouse's financial situation, the AAO cannot conclude that she is suffering from financial hardship due to the applicant's inadmissibility.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise 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). 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.

The AAO will next address whether the applicant has demonstrated extreme hardship to his spouse in the event that she accompanies him to the United Kingdom. Counsel asserts that the applicant's spouse is prohibited from working and has no recourse to public funds such as government subsidized education in the United Kingdom. Counsel states that it is speculative to assume that the applicant's spouse will be granted permanent residence in the United Kingdom. Counsel notes that the application process for permanent residence will take a certain amount of time, causing the applicant's spouse continued depression and ill-health.

The AAO notes first that, as discussed above, counsel has not demonstrated that the applicant's spouse is suffering from a medical condition related to the applicant's inadmissibility. The emotional hardship described by the applicant's spouse is hardship commonly experienced by family members as a result of removal or inadmissibility. Second, counsel has not supported his assertions regarding immigration processing in United Kingdom. Counsel has not provided any information on whether the applicant's spouse could receive a work permit or authorization to attend school pending the processing of her permanent residence in the United Kingdom. Nor has he provided any information on the permanent residence adjudication schedule and timeframes. As previously stated, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence.

Counsel further asserts that the applicant's spouse does not want to live in the United Kingdom because she would feel isolated from her parents and her family ties are in the United States. Counsel states that the feeling of isolation from family life the applicant's spouse would experience in England would cause her to lapse into depression and induce the headaches, insomnia, and abdominal pain she experiences from being isolated from her husband.

The AAO acknowledges that the applicant's spouse would suffer emotional hardship as a result of her separation from her parents and other family members in the United States. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. There is no indication in the record that the applicant's spouse's parents would not be able to visit her in the United Kingdom. Further, the applicant's spouse has not discussed any family obligations or duties that would bind her to the United States. The AAO notes that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), held 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under sections 212(a)(9)(B)(v), 212(i) and 212(h) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v), 212(i) and 212(h) of the Act, the burden of establishing that the application merits approval 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.