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

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: BALTIMORE Date: MAR 30 2010

IN RE: Applicant: [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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Chile 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks 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 his U.S. citizen father and lawful permanent resident mother.

The district director concluded that the applicant 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 District Director*, dated February 13, 2009.

On appeal, counsel for the applicant contends that the applicant did not commit fraud or misrepresentation, thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act and he does not require a waiver. *Statement from Counsel on Form I-290B*, dated March 12, 2009. Counsel further contends that the district director failed to consider hardship to the applicant's two U.S. citizen daughters. *Id.* at 2.

The record contains a brief from counsel in support of the appeal; statements from the applicant and the applicant's father; copies of the applicant's passport and C-1 visa; copies of medical documents for the applicant's daughter, mother, and father; birth records for the applicant, the applicant's daughters, and the applicant's brother; a report on conditions in Chile; a copy of the applicant's marriage certificate; employment and tax records for the applicant and his wife, and; documentation relating to the applicant's attempt to procure a U.S. visa using fraud and misrepresentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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, in pertinent part, 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 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 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 reflects that on March 2, 2000 the applicant applied for a B-1/B-2 nonimmigrant visa at the U.S. Embassy in Santiago, Chile in order to act as a bodyguard for a group of youth attending a Jewish Youth Congress in New York City. The case was investigated and the applicant was summoned to the U.S. Embassy. Upon being informed that his visa application was under investigation, the applicant maintained that he was a bodyguard for [redacted]" a community center in Valparaiso, Chile. Contact with the president of the center revealed that his signature had been forged on the support letter and that the applicant had no affiliation with the center. Accordingly, a consular officer determined that the applicant sought to procure a visa and admission into the United States by fraud or willful misrepresentation, and thus he is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel asserts that the applicant hired a "visa consultant" to assist him in obtaining a B nonimmigrant visa, and that the applicant is not aware of what fraudulent documents were submitted on his behalf. *Brief from Counsel*, at 2, March 12, 2009. Counsel contends that the applicant never had an interview and never made statements to a consular officer. *Id.* at 3.

The applicant states that in early 2000 he hired a "visa consultant" to assist him in obtaining a visa, and that he was shocked when he "was called to the [United States] Consulate in Santiago and was told that [his] visa consultant had submitted 'fraudulent documentation' on [his] behalf . . . ." *Statement from the Applicant*, dated March 9, 2009. The applicant maintains that he did not commit fraud, as his visa consultant submitted his application and he is unaware of any fraudulent contents. *Id.* at 1.

Upon review, the applicant has not shown that he was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act. As discussed above, United States Citizenship and Immigration Services records show that an investigation was conducted regarding the applicant's B nonimmigrant visa application due to suspicion of fraud. The applicant was made aware that his visa application was under investigated. He was afforded an opportunity to retract his fraudulent representation that he was a bodyguard with a community center, yet he maintained that he was in fact affiliated with the organization. The president of the center confirmed that that applicant's visa application contained a fraudulent document with a forged signature, and that the applicant was not connected to the center. Thus, irrespective of whether the applicant was aware of the fraudulent document contained in his visa application, he represented to a U.S. consular officer that he was working for the community center which was proven false. The applicant made this misrepresentation to gain a B nonimmigrant visa and admission to the United States.

Counsel contends that the applicant did not have an interview in connection with his application for a visa and he never made statements to a consular officer. However, this assertion is inconsistent with the applicant's statement on appeal, as he clearly stated that he "was called to the [United States] Consulate in Santiago . . . ." *Statement from the Applicant* at 1. The applicant has not asserted or shown that his present counsel was involved with his B nonimmigrant visa application before the U.S. Embassy in Santiago, such that counsel has a direct knowledge of the application or associated procedural history. Thus, counsel's assertions regarding the process carry no evidentiary

weight. 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). Regardless of whether the applicant made false statements to a consular officer, the record shows that on his visa application he stated that he was affiliated with [redacted]" and signed his application affirming that its contents were true.

Based on the foregoing, the applicant was properly deemed inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

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. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 to a qualifying relative. 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.

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).

On appeal, counsel asserts that the applicant's two U.S. citizen children will suffer extreme hardship should the present waiver application be denied, and that the district director erred in failing to consider their hardship. *Brief from Counsel* at 4. Counsel states that the applicant's daughters were both born premature and they suffer serious medical problems as a result. *Id.* at 5. Counsel states that the applicant's younger daughter, [redacted] has been diagnosed with high cholesterol and kidney disease. *Id.* Counsel indicates that the applicant's older daughter, [redacted] has been diagnosed with pancreatitis, and she suffers from frequent kidney and urinary tract infections. *Id.* Counsel provides that the applicant's children require constant care and frequent visits to doctors, including emergency room visits. *Id.* Counsel asserts that "[d]epriving the children from the emotional, physical, and financial support of [the applicant] in times of illness clearly constitutes extreme hardship to the family." *Id.*

Counsel states that it is unknown whether the applicant's daughters would get adequate medical care in their new country of residence should they depart the United States. *Id.*

Counsel asserts that the health of the applicant's parents and daughters will suffer without the applicant's physical and emotional support. *Id.* at 6. Counsel contends that the applicant's family in the United States would face deteriorated economic conditions should the applicant return to Chile without his wife and children. *Id.* Counsel provides that the applicant may not be able to find a job in Chile. *Id.*

The applicant states that his daughters have been diagnosed with serious pediatric disorders. *Statement from the Applicant* at 2. He provides that [redacted] was diagnosed with kidney disease and high cholesterol since birth, and that [redacted] recently had to be rushed to an emergency room due to severe abdominal pain. *Id.* He reports that [redacted] was diagnosed with kidney infection, urinary tract infection, and pancreatitis. *Id.* He expresses that he does not wish to live apart from his daughters while their health is fragile, but that he does not wish to relocate them to Chile while they need serious medical care. *Id.*

The applicant's father states that he has resided in the United States since 1998. *Statement from the Applicant's Father*, dated March 7, 2009. He provides that he is employed as a carpenter for a construction company, and that he works with the applicant. *Id.* at 1. He asserts that it would be difficult for him to reside in the United States without the applicant, as the applicant helps him get his prescription drugs for diabetes and reminds him to take them. *Id.* He indicates that he has been diagnosed with uncontrolled hypertension, diabetes mellitus type 2, and hyperlipidemia. *Id.* He provides that he must follow a strict diet, and that the applicant helps him maintain the diet as they eat lunch together. *Id.*

The applicant's father expresses that his family is very close. *Id.* He asserts that the applicant's mother suffers from chronic depression, and that she would endure significant emotional hardship if the applicant is compelled to depart the United States. *Id.*

The applicant's father indicates that the applicant's daughters give him much joy. *Id.* He states that he is worried for [redacted] health, and that "[t]o separate a family when one's child has to undergo treatment for such a serious condition, is beyond belief." *Id.*

The applicant provides a letter from a physician, [redacted], who reports that [redacted] was seen in an emergency room for abdominal pain, pancreatitis, and urinary tract infection. *Letter from* dated March 5, 2009. [redacted] states that [redacted] pancreatitis is being evaluated by a gastroenterologist, she is on antibiotic for a urinary tract infection, and she will be evaluated for kidney disease. *Id.* at 1.

In a separate letter, reported that [redacted] "is a healthy 8 year old girl who is currently being followed for hypercholesterolemia." *Prior Letter from* [redacted] dated October 13, 2008. He stated that [redacted] past medical history includes being 32 weeks premature, and being placed on an apnea monitor for an apparent life-threatening event that has since resolved. *Id.* at 1. [redacted] stated that [redacted] is being followed for poor weight gain, and they were planning a gastroenterology consultation to evaluate her "failure to thrive." *Id.* He

indicated that [redacted] constipation is controlled with miralax, and her left kidney pyelectasis is followed by urology and a renal ultrasound was pending. *Id.*

The applicant provides a letter from a physician, [redacted] who states that the applicant's father has been under his care since 2002 for uncontrolled hypertension, diabetes mellitus type 2, and hyperlipidemia. *Letter from* [redacted] dated March 5, 2009.

The applicant submits a letter from a physician, [redacted] who provides that the applicant's mother suffers from anxiety and depression for which she has been taking medication. *Letter from* dated March 3, 2009. states that the applicant's mother's condition has worsened due to the possible departure of the applicant. *Id.* at 1.

The applicant provides a report from a licensed social worker, [redacted] who stated that he evaluated the applicant, the applicant's wife, the applicant's two daughters, the applicant's two brothers, and the applicant's parents in a three-hour meeting and subsequent telephone calls. *Report from Licensed Social Worker*, dated October 23, 2008. [redacted] stated that the applicant is one of four children, and that his two brothers are U.S. citizens and reside in the United States. *Id.* at 2. [redacted] reported that the applicant's sister resides in Chile with her two children, and that the applicant's wife has extensive family residing in Chile. *Id.* [redacted] indicated that the applicant's wife is a full-time stay-at-home mother and devoted wife. *Id.*

[redacted] stated that medical services in the major cities of Chile are reported to be good, but that the quality of care deteriorates as one moves outward to rural areas. *Id.* at 3. [redacted] asserted that the applicant lacks relationships with people who might assist his employment in Chile, and thus his family may lack health insurance or adequate resources to fund more sophisticated care that is required by his daughters. *Id.*

observed that the applicant's family members are close, and that the applicant's relatives in the United States will lose the opportunity to enjoy the frequent companionship of the applicant should he depart the United States. *Id.* at 4. [redacted] provided that the applicant's daughters would have challenges should they relocate to Chile due to leaving their lives and attachments in the United States behind, which could have a detrimental impact on their development. *Id.* at 4-5.

Upon review, the applicant has not shown that a qualifying relative will experience extreme hardship should he be compelled to depart the United States. As noted above, in order to show eligibility for a waiver, the applicant must establish that a U.S. citizen or lawful permanent resident spouse or parent will suffer extreme hardship. The applicant has not asserted or shown that his wife is a U.S. citizen or lawful permanent resident. The applicant's father is a U.S. citizen and his mother is a lawful permanent resident. Thus, the applicant must show that his father or mother will endure extreme hardship in order to establish eligibility for a waiver under section 212(i) of the Act.

The record contains references to hardships experienced by the applicant's daughters. Direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As correctly asserted by counsel, hardship to a family unit or non-qualifying family member should be

considered to the extent that it has an impact on qualifying family members. Thus, the AAO will examine the impact that hardship to the applicant's daughters has on the applicant's father.

The applicant has not shown that his father will endure extreme hardship should he remain in the United States without the applicant. The applicant's father suffers from health problems, including uncontrolled hypertension, diabetes mellitus type 2, and hyperlipidemia. He asserts that the applicant assists him with his dietary needs during their lunch breaks. However, the applicant has not shown that his father in fact requires his assistance in order to adhere to his diet and manage his health conditions. The applicant's father indicated that the applicant helps him get his medication. Yet, as the applicant's father works as a carpenter, the record supports that he is capable of earning income and performing ordinary tasks, including obtaining any needed prescription medication. It is noted that the applicant has two brothers who also reside in the United States, thus his father is not without assistance should the applicant depart.

Counsel indicated that the applicant's family in the United States would face deteriorated economic conditions should the applicant return to Chile. Yet, the applicant has not asserted or shown that he provides economic support for his father or that his father would incur economic detriment should the applicant relocate to Chile.

The applicant's father expressed that his family is very close and that the applicant's daughters give him much joy. Thus, he indicated that he does not wish to be separated from the applicant and his granddaughters. He stated his concern for [redacted] health and the consequences of separating her family members when she is in need of medical treatment for a serious condition. The AAO acknowledges that the applicant's father will endure psychological hardship should he lose regular contact with the applicant and his granddaughters. However, this separation alone is a common consequence when family members are compelled to relocate due to a prior violation of immigration law and resulting inadmissibility.

Federal court and administrative 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.

The AAO recognizes that the applicant's father's emotional challenges are compounded due to the applicant's daughters' health problems. Yet, the applicant has not shown that his daughters will lack access to proper medical care should he depart the United States. The record shows that the applicant's wife is a stay-at-home mother, thus it is evident that she resides in the United States with the applicant and their daughters. The applicant has not indicated his wife's immigration status, or otherwise shown that she would be compelled to depart the United States if his waiver application is denied. Thus, the applicant has not shown that his daughters would be left without a caregiver in the

United States should he depart, or that they would necessarily depart with him and lose access to their current medical care providers.

Further, the applicant has not shown that his daughters would lack access to sufficient medical care in Chile should they relocate with him. Counsel stated that it is unknown whether the applicant's daughters would get adequate medical care in Chile. [redacted] stated that, while the quality of medical care in Chile deteriorates as one moves outward to rural areas, medical services in the major cities are reported to be good. The applicant has not asserted or shown that he and his daughters would be compelled to reside in a rural area in Chile where medical care is lacking. The applicant also has not shown that he would be unable to find employment in Chile that is sufficient to meet any medical costs his family may incur due to his daughters' needs. [redacted] asserted that the applicant lacks relationships with people who might assist his employment in Chile, yet he observed that the applicant has a sister in Chile, and the applicant's wife has an extensive family network there.

Thus, the applicant has not shown that denial of the present waiver application presents a substantial risk to his daughters' health. The AAO acknowledges that the applicant's daughters have experienced medical problems that understandably give rise to concern to a grandparent. However, the applicant has not shown that his daughters face hardships that elevate his father's emotional suffering to an extreme level.

Based on the foregoing, the applicant has not established by a preponderance of the evidence that his father will endure extreme hardship should the applicant depart the United States and he remain.

The applicant has also not shown that his father will endure extreme hardship should he join the applicant in Chile. The applicant's father did not state that he would suffer hardship should he relocate to Chile to maintain family unity. The applicant's father suffers from uncontrolled hypertension, diabetes mellitus type 2, and hyperlipidemia, yet the applicant has not asserted or shown that his father would lack access to proper medical care for these conditions. The applicant has not shown that his father would be unable to continue his trade as a carpenter, or that he would endure financial hardship. As the applicant's father is a native of Chile, it is evident that he would not face the challenges of adapting to an unfamiliar language or culture should he return there. Accordingly, the applicant has not established that his father would suffer extreme hardship should he relocate to Chile.

The applicant has not shown that his mother would endure extreme hardship should she remain in the United States without him. While the record shows that she has been under a physician's care for anxiety and depression, the single, brief letter regarding her medical history is not sufficient to show that she would face unusual emotional consequences should she be separated from the applicant and her granddaughters. The applicant has not shown that his mother depends on him for financial support or that she would face economic detriment due to his absence. The applicant has not described other elements of hardship to his mother should he depart the United States and he remain.

The applicant has also not asserted or shown that his mother would endure extreme hardship should she relocate to Chile to maintain family unity. The applicant has not shown that she would lack

access to needed medical care, or that she would face unusual financial challenges. The record reflects that the applicant's mother is a native of Chile, thus she would not endure the difficulty of adjusting to life in an unfamiliar culture with a new language.

Based on the foregoing, the applicant has not shown that his mother will suffer extreme hardship should his waiver application be denied, whether she relocates to Chile or remains in the United States.

The AAO recognizes that the applicant's family members have concern for his daughters' health, and they have an interest in their development and continued access to medical care. However, the applicant has not shown that his daughters' hardship would elevate his parents' challenges to an extreme level. All elements of hardship to the applicant's parents have been considered in aggregate. Yet, he has not established by a preponderance of the evidence that denial of the present waiver application "would result in extreme hardship" to his father or mother, as required for a waiver under section 212(i) 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.