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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

Date: NOV 09 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) denied a subsequent appeal as well as a motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion will be granted, but the appeal will be dismissed. The application remains denied.

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 willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The Director concluded the applicant failed to establish that she qualified for a waiver because she did not indicate that she was the spouse or daughter of a U.S. citizen or lawful permanent resident. The Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See decision of Director,* April 8, 2006.

The AAO dismissed the applicant's subsequent appeal, finding that the record did not contain sufficient evidence to show that the hardships faced by the applicant's lawful permanent resident spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See decision of AAO,* October 8, 2006. The AAO then granted the applicant's subsequent motion to reopen. However, the AAO again found there was insufficient evidence of extreme hardship to the applicant's lawful permanent resident spouse and dismissed the appeal. *See decision of AAO,* July 6, 2011.

On the present motion, the applicant, appearing without counsel, submits additional documents in support of a finding of extreme hardship to her lawful permanent resident spouse. The documents include an affidavit from the applicant's spouse, copies of birth certificates and social security cards, letters from the spouse's employer and union, medical records, additional billing statements, documents related to the spouse's mortgage, and photographs.

In support of the motion, the record includes, but is not limited to, the documents listed above, a brief from counsel, other medical records, country condition reports, financial documentation, birth and naturalization certificates, a letter from the applicant's spouse, and a letter from the applicant's mother. The entire record was reviewed and considered in rendering a decision on the motion to reopen.

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 [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 [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 Director found the applicant was inadmissible under section 212(a)(6)(C) of the Act for having presented a passport and visa belonging to another person for admission to the United States on January 7, 2003. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed her inadmissibility on appeal or on either motion to reopen. The AAO therefore affirms its previous findings that the applicant is inadmissible under section 212(a)(6)(C) 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 alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's mother. 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the

United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse states on the first motion to reopen that he and the applicant are first time parents and it would be hard to be separated from each other and raise a child alone. *Affidavit of applicant's spouse,* October 24, 2008. He explains he wants his daughter to have both parents in her life. *Id.* He contends he is suffering from emotional stress with the thought of his wife and child being separated from him. *Id.* In an updated affidavit, the applicant's spouse explains in addition to their daughter he and the applicant now have a nine month old son, who is still breastfeeding. *Affidavit of applicant's spouse,* August 4, 2011. He reiterates without the applicant, he "cannot see [his] life without her in the United States... [they] have built a wonderful life together." *Id.* The applicant's spouse additionally states: "the emotional stress of thinking that our family can be separated has taken a toll on me. I cannot concentrate at work. I am so afraid of losing my job. I am the only financial provider of our household." *Id.*

The applicant submits additional evidence of monthly expenses in support of a finding of financial hardship. These expenses include a mortgage loan letter showing a monthly mortgage of $1,935.89 per month, a homeowner's policy statement showing an annual premium of $930.00, a checking and savings account statement, a Geico statement as evidence of a $116.19 monthly payment, an AT&T wireless bill for $179.38, a Time Warner cable bill for $138.30 per month, and a Citi credit card statement showing a minimum monthly payment of $20.00. *See billing statements.* The applicant's spouse claims: "If [redacted] was not here to take care of our daughter and son, then I will have to pay someone to take care of them. I cannot afford it financially because we have just purchase[d] our new home. To pay for a babysitter, mortgage, food, and other bills is too much for me. I will be under too much stress and pressure to take care of everything on my own." *Affidavit of applicant's spouse,* August 4, 2011.

The applicant's spouse also claims he experiences medical hardship. In his affidavit, the applicant's spouse explains: "I suffer from pain in my back and neck. I have received several acupuncture treatments over the past few years. Here in the U.S., I have access to the best medical services. If we were to go to Guyana to live I do not know if I will be able to get the right treatment and medication to help me with my pain because we will have no medical coverage." *Id.* In addition to the medical documents previously submitted, the applicant submits notes from six visits to the Pain Management Center of Long Island. *See medical notes.*

The newly and previously submitted records consist of laboratory results and physician's "progress notes" for medical care from 2008 to 2011. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Moreover, the AAO finds assertions of financial hardship remain unsupported by the record. The record contains an employment verification letter dated October 29, 2008 from Day-Night Plumbing, Heating and Cooling Corporation stating that the applicant's spouse earns a weekly salary of $900.00 (or $46,800 annually). *See letter from* [redacted] October 29, 2008. Even with the newly submitted billing and mortgage statements, the record does not show the applicant's spouse's expenses exceed his income. Moreover, although the applicant's spouse claims he will be unable to pay for a babysitter in the event the applicant returned to Guyana, the applicant submits no evidence of those costs, or an explanation with corroborating evidence of why the spouse's relatives, who he is "very close" to, are unable to assist with childcare. *See affidavit of applicant's spouse,* October

24, 2008. Given the evidence of record, the AAO cannot conclude the applicant's spouse would suffer financial hardship without the applicant.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Guyana without her spouse.

On the motion to reopen, the applicant's spouse contends if he returned to Guyana with the applicant, he would face financial difficulties because all the "savings [they] had went into the house," and he would have difficulties finding employment. *Affidavit of applicant's spouse,* August 4, 2011. Again, the assertions of financial difficulty are not further explained. The applicant has failed to discuss or provide supporting evidence to show that, as a plumbing technician with at least seven years of experience, he would be unable to find employment in Guyana. *See letter from* [redacted] July 25, 2011 ("Since 2004 I have witnessed his ascension to being an accomplished plumbing technician... [redacted] is a loyal and valued employee and friend.") The record also does not contain an assertion or evidence that the spouse could not sell or rent the house in the event of relocation. As such, the applicant has not provided sufficient evidence to show her spouse would suffer financial difficulties upon relocation to Guyana, a country of which he is a citizen and national.

The applicant's spouse's repeated assertions that the family's "safety will be at risk because of the high crime rate" and they may be targeted because "people know that you came from the U.S. [and] they assume you have lots of money and may want to harm [them] to get it" is again unsupported by evidence specific to the applicant or her spouse. *Affidavit of applicant's spouse,* August 4, 2011. The AAO acknowledges that the U.S. Department of State's current travel advisory on Guyana states that "Serious crime, including murder and armed robbery, continues to be a major problem." *See Guyana: Country Specific Information, U.S. Department of State,* October 6, 2011. However, neither the applicant nor her spouse has discussed their experiences in Guyana, and whether they were victims when residing in the country. Furthermore, the applicant has not discussed where she and her spouse would reside in Guyana, and the safety and conditions of their residential location. The AAO notes that the applicant's spouse is a native and citizen of Guyana, and as such he should have less difficulty adjusting to the culture, languages, and customs of that country.

The AAO again finds there is nothing in plain language from a medical professional providing the diagnosis, prognosis and treatment plans for the applicant's spouse's condition. *See supra.* Nor is there any indication from a medical professional that her spouse has a significant or serious medical condition which could not be treated in Guyana. The AAO observes that counsel's brief, submitted with the first motion to reopen, states that a medical letter has been submitted, but this document is not part of the record. *Brief in support of motion to reopen,* November 5, 2008. Because of these

deficiencies, the AAO cannot find that the applicant's spouse would suffer medical hardships upon relocation to Guyana.

The AAO observes that the record still lacks statements from the applicant's spouse's siblings, or evidence of their identity and residence in the United States. However, the record does contain a statement from the applicant's spouse's U.S. citizen mother. *See affidavit of* [redacted], August 8, 2005. The AAO acknowledges that the applicant's spouse would suffer from the emotional loss of being separated from his U.S. citizen mother, and weight is given to this emotional hardship. The separation of family members often results in significant psychological hardship. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968), the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. While we give some weight to the emotional impact of separation in this case, we cannot find that the applicant's spouse is suffering extreme hardship based on this factor alone. The applicant has not submitted evidence to show that the emotional hardship of separation is atypical and beyond what would normally be expected. Based on the foregoing analysis of all the hardship factors individually and cumulatively, the AAO finds the applicant has not demonstrated her spouse would suffer extreme hardship if he relocated to Guyana.

In this case, the record does not contain sufficient evidence to show that the applicant's spouse would suffer extreme hardship if the applicant is denied admission to the United States. The AAO therefore again finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed, and the application remains denied.

ORDER: The motion to reopen is granted; however, the appeal is dismissed.