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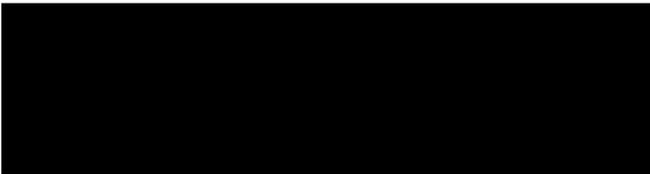
Office: NEWARK, NJ

Date: JUL 26 2007

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Newark, New Jersey, denied the waiver application, and it 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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a naturalized U.S. citizen and the father of a U.S. citizen son. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and child.

The district 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. The district director further found that the applicant did not warrant a favorable exercise of discretion. *Decision of the District Director*, dated September 15, 2005.

The record reflects that, on August 21, 1993, the applicant applied for admission at the New York City, New York Port of Entry. The applicant presented a United Kingdom (U.K.) passport belonging to another person. The applicant was found inadmissible pursuant to sections 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I), 212(a)(7)(B)(i)(I) and 212(a)(7)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(7)(A)(i)(I), 1182(a)(7)(B)(i)(I) and 1182(a)(7)(B)(i)(II), for attempting to enter the United States by fraud, being an immigrant who is not in possession of valid documentation to enter the United States, and being a nonimmigrant who is not in possession of a valid passport or documentation to enter the United States. The applicant was placed into proceedings on the same day. The applicant filed an Application for Asylum or Withholding of Removal (Form I-589) before the immigration judge. On July 28, 1995, the immigration judge denied the applicant's applications for asylum and withholding of removal and ordered him removed from the United States. The applicant appealed to the Board of Immigration Appeals (BIA). On October 22, 1996, the BIA dismissed the applicant's appeal. The applicant failed to present himself for removal or to depart the United States. On March 10, 2000, the applicant pled guilty to and was convicted of conspiracy to commit theft by deception in violation of the New Jersey Statutes (NJS). The applicant was sentenced to three years of probation. On October 8, 2003, the applicant married his spouse, [REDACTED]. On February 13, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [REDACTED]. On January 13, 2005, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his spouse.

On appeal, counsel asserts that the district director was improperly dismissive of the expert psychological evaluation and country conditions reports submitted with the Form I-601. *See Form I-290B and Resubmitted Briefs*, submitted October 14, 2005. In support of his contentions, counsel submits only the referenced briefs and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —

- (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 –
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . if

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
  - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
  - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
  - (iii) the alien has been rehabilitated; or
- (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 . . .

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for conspiracy to commit theft by deception, a crime involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

The AAO notes that the applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act after he attempted to obtain entry into the United States by presenting a U.K. passport belonging to another in

1993. Accordingly, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on his 1993 attempt to gain entry into the United States by fraud.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

A section 212(h) waiver is either dependent upon a showing of rehabilitation, if it has been more than 15 years since the activities occurred that gave rise to the inadmissibility, or that the bar to admission would impose an extreme hardship on the U.S. citizen or lawfully resident spouse, child or parent of the applicant. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship only on the U.S. citizen or lawfully resident spouse or parent of the applicant. As such, the AAO will adjudicate whether the applicant meets the more restricted requirements of a section 212(i) waiver before it determines whether the applicant is eligible for a section 212(h) waiver.

Hardship to the alien himself is not a permissible consideration under the statute. As just notes, section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 set forth a list of non-exclusive factors relevant to determining whether an alien 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. *Supra.* at 566. The BIA has held:

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of the denial of the waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remains in the United States or accompanies the applicant to the foreign country of residence.

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).

The record reflects that [REDACTED] is a native of Uganda who became a lawful permanent resident in 1993 and a naturalized U.S. citizen in 2001. The applicant and [REDACTED] have a two-year old son who is a U.S. citizen by birth. The applicant is in his 40's and [REDACTED] is in her 30's.

Counsel, in the brief responding to the district director's Notice of Intent to Deny (NOID Brief), contends that [REDACTED] has given birth to the applicant's son who is a qualifying U.S. citizen relative. While, as noted above, the child is a qualifying relative for the purposes of a 212(h) waiver proceeding, Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen son will not be considered in determining the applicant's eligibility for a waiver under section 212(i) of the Act, except as it may affect the applicant's spouse, the only qualifying relative.

Counsel, in the NOID Brief, asserts that the district director's statement that the 2003 country conditions reports submitted with the Form I-601 are of little value in light of the immigration court's denial of the applicant's asylum application is incorrect because it was offered as evidence of the hardship [REDACTED] would suffer. The AAO finds that, while counsel is correct in stating that country conditions reports can be used to establish the hardship an applicant's spouse would suffer if they were to accompany an alien to their home country, the country conditions reports submitted by counsel are dated in 2003 and not the year in which the applicant submitted his Form I-601, 2005. The 2003 country conditions reports do not establish country conditions in Uganda in 2005, the time at which the Form I-601 was filed. Therefore the record does not contain evidence to establish whether the applicant's spouse would suffer extreme hardship in relation to Uganda's country conditions.

Counsel, in the NOID Brief and the brief submitted with the Form I-601, also asserts that, if [REDACTED] remains in the United States without the applicant, she will be plagued by a constant concern for the welfare

of her husband and will suffer due to the separation from her spouse. Counsel asserts that Uganda is a dangerous and war-torn nation to which the applicant would be removed and it would cause [REDACTED] to be concerned for her husband's safety. Counsel asserts that [REDACTED] fears she may have to raise her child alone, which is causing her to suffer a Major Depressive Disorder.

[REDACTED] in her affidavit, states that her first husband was verbally abusive to her and caused her great emotional trauma that left her scarred. She states that she doubted she would ever be able to trust a man again until she met the applicant. She states that even though she had been diagnosed with fibroids she became pregnant, but that, unfortunately, due to her condition she suffered a miscarriage while she was visiting Uganda. She states that she had to suffer through the miscarriage alone, without the support of the applicant. She states that when she returned to the United States she underwent surgery to improve her chances of becoming pregnant. She states that the applicant supported her through the surgery and her recovery both financially and emotionally. She states that she became pregnant in August 2004. She states that the applicant was a source of strength throughout the pregnancy, comforting her when she feared the loss of the pregnancy, and helped her with household chores. She states that she could not have made it through this trying anxious time without the applicant. She states that to raise their child they will need two incomes and that they will both have to work to support their family.

A brief medical letter states that, on January 6, 2005, [REDACTED] was approximately 21 weeks pregnant with a due date of May 19, 2005. The medical letter states that due to the high-risk nature of her pregnancy [REDACTED] will require support both during and after her pregnancy. However, the AAO finds that the applicant has given birth to her child and her high-risk pregnancy is no longer a factor that can be considered.

A psychological report, prepared by [REDACTED] a licensed psychologist, states that [REDACTED] is very depressed and anxious about the applicant's possible departure from the United States. The evaluation, conducted prior to the birth of the applicant's son, states that [REDACTED]'s fears have contributed to her significant depressive symptomatology and has seriously muted the joy she should have in her pregnancy. The psychological report indicates that [REDACTED] was verbally, sexually, psychologically and physically abused by her prior spouse and that there is a deep bond between her and the applicant. The psychological report indicates that [REDACTED] has become seriously depressed and, while she has not made any suicidal gestures, she has thought of taking pills. The psychological report diagnoses [REDACTED] as suffering from Major Depressive Disorder and states that it would be very difficult for [REDACTED] to take anti-depressant medication since physicians are reluctant to place pregnant women on such medication. The report concludes that [REDACTED]'s depressive disorder is a result of her fear that she may have to raise a child without the applicant and that it would be extremely difficult for her symptoms to be ameliorated by medication and supportive psychotherapy because it is situationally based.

Counsel, in the NOID Brief, asserts that the district director's treatment of the psychological report was improper because it was dismissive and casual. However, the AAO finds that the weight the district director gave to the psychological report was appropriate. While the input of any medical health professional is respected and valued, [REDACTED] evaluation is based on a single interview with [REDACTED]. A psychological report based on one interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing his evaluation's value to a determination of extreme hardship. Moreover, the

record does not contain evidence that [REDACTED] has sought or received any other treatment or evaluation for anxiety and depression. The AAO also notes that the evaluation was conducted after the Notice of Intent to Deny the Form I-601 was issued and that [REDACTED] makes no mention of any psychological problems in the statement she submitted in support of the Form I-601. Accordingly, [REDACTED]'s evaluation will be given little evidentiary weight. There is no evidence in the record, besides the psychological report, that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would experience anxiety and depression as a result of separation from her spouse and the separation of her child from his father, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as her adult siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

While counsel asserts that [REDACTED] would fear for the safety of the applicant in Uganda due to the war-torn conditions in Uganda [REDACTED]'s affidavit does not describe any hardships that she might suffer in regard to the applicant's safety in Uganda. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). Additionally, as discussed above, country conditions in Uganda have changed.

While [REDACTED] asserts that she needs the applicant's income in order to be able to raise her child, the record does not establish that [REDACTED] would be unable to support herself and her child without the applicant's income. Instead, the record reflects that [REDACTED] has been employed as a nurse since 1992 and that in 2002 she earned \$47,353. The record also indicates that [REDACTED] has health insurance through her employment. Although it is unfortunate that [REDACTED] may essentially become a single parent and have the added expense of paying for childcare, this is also not a hardship that is beyond those commonly faced by aliens and families upon removal. Accordingly, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and her child, even when combined with the emotional hardship described above.

Counsel, in the NOID Brief and the brief accompanying the Form I-601, asserts that [REDACTED] would suffer should she and her child have to accompany the applicant to Uganda. Counsel asserts that [REDACTED]'s choice as to whether to join the applicant in Uganda would be made more excruciating in light of the unstable and unsafe conditions in Uganda. Counsel asserts that Uganda is a war-torn nation and that the current horrendous conditions in Uganda are not diminished by the fact the applicant was unable to meet the standards set for asylum more than ten years ago. However, [REDACTED]'s affidavit does not describe any hardships that she might suffer if she were to accompany the applicant to Uganda and as previously noted the record does not contain evidence of Uganda country conditions in 2005. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, *Supra*; *Matter of Ramirez-Sanchez*, *Supra*. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should she choose to join the applicant in Uganda. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver

request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

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 if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (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). "[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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether he merits a waiver pursuant to section 212(h) of the Act or as a matter of discretion. The AAO notes that counsel's assertions regarding the diminished weight the district director gave to the applicant's after-acquired spouse and child are relevant to whether the applicant warrants a favorable exercise of discretion following a determination of extreme hardship.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.