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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CHICAGO, ILLINOIS Date: **APR 15 2008**

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:



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

The applicant is a native and citizen of Haiti 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated July 14, 2005. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that during the adjustment of status interview the applicant admitted to using a green card, which he purchased for \$2,000 to \$3,000, between 1996 and 1998 to gain admission into the United States, and that he was turned around at the airport in New Jersey or Houston.

Based on the documentation in the record, the AAO finds the applicant is inadmissible under section 212(a)(6)(C) of the Act for using a fraudulently obtained green card as a means of gaining admission into the United States.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 to an applicant and his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his step-children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the

applicant's U.S. citizen spouse. 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 meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant, and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains medical records, income tax returns, wage statements, affidavits, letters commending the applicant's character, birth certificates, a marriage certificate, photographs, school transcripts, invoices, mortgage statements, letters of recommendation, an insurance declaration, tax records for 2004 (without W-2 forms), U.S. Department of State information on Haiti for 2003, and other documents.

The affidavit dated August 25, 2005 by the applicant's wife states that she was born and raised in Chicago by a single mother and aunts, and has four sisters and two brothers in Chicago who she has a close relationship with. She states that she never knew her father and that is why she wants her children to have a father. She states that she had surgery and physical therapy for an ankle injury that occurred in March 2004, and additional therapy is required because she cannot stand for long or walk a far distance. She states that both of her children have asthma, and her son requires an inhaler. For asthma attacks, she states that her son uses a breathing machine and takes medication (albuterol). She states that she finished the ninth grade and does not have any particular training, and needs employment that pays enough for day care and after-school care, and does not require standing for long periods of time. She states that she cannot imagine life without her husband, and conveys that her husband pays the mortgage on the house they just bought because she has bad credit. The applicant's wife states that she will not be able to afford the mortgage without him. She states that going to Haiti would be horrific as she does not know the language or anyone there, and finds it to be a

dangerous place. She states that she cannot imagine taking her children, especially her son, where there is not sufficient healthcare.

In her February 9, 2005 affidavit, the applicant's wife states that the applicant and her children have a close relationship, that she had her first child at when she was 14 years old, and that she experienced abuse throughout her life. She states that now she is back in school due to her husband's motivation and support and that her life would be meaningless and empty without her husband.

The December 28, 2003 letter by the applicant's wife states that her life changed after she met the applicant and she asserts that her marriage is not a sham.

The affidavit by the applicant's husband of the same date conveys that he supports his family who live in Haiti. He states that his step-son would have a problem using a breathing machine in Haiti because there is never a sure supply of electricity. He states that his wife and step-children would not adapt to life in Haiti as there is violence and no work, and they would not be able have education and medical care. He states that he now works for Valet Parking and Standard Parking and attends school.

In a letter dated February 9, 2005, the applicant's sister states that her brother has provided stability for his wife and her children. She conveys that her mother and his family live in a basement apartment to save money to buy a house. She states that the applicant's wife has been out of work for two years and her brother is the only provider for the family. She states that her brother encouraged his wife to return to school and that he is the only father figure to his step-children. She states that her brother also helps her, picking up her children and those of their brothers and sisters at church.

The letter by the fiancé of the applicant's sister conveys that the applicant lives in his basement apartment and has always paid rent timely. He states that the applicant's wife had been out of work for more than one year and that the applicant helps his step-children with their homework and drives them to school. He states that the applicant encourages his wife to return to school and that the applicant is saving money to buy a house.

The letter dated February 2, 2005 conveys that since October 16, 2003 the applicant's present position with Valet Parking Services, Inc. is as a full-time valet attendant earning \$6.80 per hour.

The 2004 income tax records show income of \$19,987. No W-2 Forms were provided.

The W-2 Forms accompanying the tax return for 2001 shows the applicant's wife as earning \$21,348 and her husband as earning about \$2,700.

The Affidavit of Support shows the applicant's wife as unemployed since June 2002.

The January 25, 2001 letter by Midland Hotel conveys that the applicant's wife was employed there since June 18, 1999 as a full-time room attendant with the hourly wage of \$8.60.

The U.S. Department of State report for 2004 states that the United Nations indicates that 42 percent of the children in Haiti under the age of 5 were chronically malnourished and that most rural families cannot afford to send their children to school. In the report, schools in Haiti are said to be "dilapidated and understaffed"

and it states that the Haitian government estimates that about 40 percent of children never attend school, and of those who attend, less than 15 percent graduate from secondary school.

The medical records convey that the applicant's wife underwent surgery for a fractured left ankle in 2004, but they do not show her as requiring or having physical therapy. The records show the applicant's wife as unemployed at the time of injury.

The medical records for the applicant's step-son, [REDACTED], show that a doctor treated him for asthma on December 21, 2005, July 21, 2005, April 8, 2005, December 3, 2004, October 12, 2004, and October 1, 2003, and on May 9, 2002 for bronchitis.

The doctor's notes for December 21, 2005 convey that the albuterol nebulizer machine at the applicant's house broke two months ago and was not replaced. The notes state that [REDACTED] uses an inhaler 4-5 times a day, and that wheezing is worse at night but is continuous throughout the day. They show that [REDACTED] uses flovent and albuterol.

The Harmony Health Plan of Illinois, Inc. shows the applicant's wife and step-son on the plan.

The record shows that the applicant's step-daughter is 14 years old and his step-son is 9 years old.

The Quit Claim Deed, recorded on August 19, 2005, shows that the applicant conveyed the property at [REDACTED], Chicago, Illinois, from his sole ownership to that of himself and his wife as joint owners.

The mortgage statements show there are two loans for the South Ridgeland property, one for \$380.63 and the other for \$1,021.85.

The SBC invoice shows charges of \$128.14, \$83.50, \$62.62, and \$126.89.

The letter by [REDACTED] conveys that the applicant has been a volunteer at the Neighborhood Housing Service for the past three years and his involvement has focused on crime and housing.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

On appeal, counsel states that the applicant's wife broke her ankle in 2004, which required surgery, and that she is unable to stand or walk for a long period of time without having pain. He states that the applicant's wife was told by her doctor that she may require another surgery and that she needs more therapy. Counsel states that the applicant's wife has two children from a prior relationship, that both children have asthma, and that her son, who uses an inhaler frequently and has been to the emergency room due to asthma, has a breathing machine at home. He states that the applicant works full-time and attends school, and his wife stays at home with the children now because of her physical limitations due to the ankle injury. He states that the applicant is the only step-father the children have ever known and that he is the breadwinner of the family. He states that if the applicant's wife remained in the United States without him, she would lose the home. He states that the applicant's wife has no particular job skills and would have great difficulty working, caring for two children, and dealing with the physical limitations caused by the broken ankle. He states that the

applicant's wife would not have the financial means to travel to Haiti and that the applicant and his wife married on May 27, 2000.

Counsel maintains that the facts in *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) differ from those presented here. He states that unlike Ngai, the applicant and his wife have lived together as husband and wife, and their separation would not be voluntary. He states that the applicant's wife is dependent upon the applicant economically and for getting around because of her injury. Counsel distinguishes *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978) and *Perez v. INS*, 96 F. 3d 390 (9th Cir. 1996) from the instant case, stating that *Matter of Chumpitazi* involved only minor economic hardship to the applicant and some difficulty in readjusting to the applicant's country of origin. He states that in *Matter of Perez* the applicant and his wife were both under deportation or removal proceedings and did not allege they would leave the United States and have their children remain here.

With regard to the financial hardship claim, the applicant states that his wife is presently unemployed and that he provides the sole income for the family. The record shows that the applicant and his wife own a house which has two mortgages. The applicant states that if his wife were to remain in the United States without him, she would lose the home. Although income tax records have been provided for 2004, the most recent of the submitted tax returns, the W-2 Forms have not been included. Without these forms, the AAO cannot determine whether the applicant's family relies upon his financial support. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO finds that the medical records do not indicate that the applicant's wife requires physical therapy and/or another surgery for her ankle; nor do the records show any long-term physical limitations caused by the injury.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit

stated that deportation is not without personal distress and emotional hurt, and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's wife is very concerned about separation from her husband and his separation from her son and daughter. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The record is sufficient to establish that the applicant's wife would experience extreme hardship if she were to join her husband to live in Haiti.

On appeal, counsel states that the applicant's wife, who speaks only English, has never lived anywhere but the United States. He states that the applicant's wife was born and raised in Chicago, Illinois, and that her mother is deceased and all of her siblings live in Chicago. Counsel states that the applicant's wife would have to abandon her whole life, and perhaps her children, if she chose to join her husband to live in Haiti. Counsel states that Haiti is a poor and unstable country. He states that the applicant's family would suffer because of the economy and lack of political stability, infrastructure, jobs, healthcare, and education. Counsel states that the World Bank Development Indicators show that the Gross National Income per capita for 2004 in Haiti was \$380.00. He states that the applicant now earns sufficient income to support his family and that they have bought a house. In Haiti, counsel states they would have nothing. Counsel states that the applicant's wife still requires therapy and may require additional surgery for her ankle. He states that it is unlikely that the applicant's wife and step-son would have readily available treatment in Haiti, especially because of affordability. He states that it would be a great hardship to the applicant's wife to know her son was suffering from asthma and was unable to get treatment.

The conditions in the country where the applicant's wife would join her husband are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The applicant's wife conveys that she is concerned about her nine-year-old son living in Haiti because of his asthma. Although hardship to the applicant's step-children is not a consideration under section 212(i) of the Act, the hardship endured by his wife, as a result of her concern about the well-being of her children, is a relevant consideration.

The U.S. Department of State information reveals that over 40 percent of the children under the age of 5 in Haiti were chronically malnourished. It portrays schools in Haiti as "dilapidated and understaffed" and conveys that 40 percent of children never attend school, and of those who attend, less than 15 percent graduate from secondary school. As stated by counsel, Haiti has a Gross National Income per capita of \$380.00 in 2004.

The record establishes that the applicant's step-son has serious problems with asthma for which he has had to have treatment by a doctor. It shows that although the albuterol nebulizer machine used by the applicant's step-son at home broke and was not replaced, the applicant's step-son has severe asthma problems that require using flovent and albuterol inhalers 4-5 times a day, and having continuous wheezing during the day and worse wheezing at night.

In the context of the health problem of the applicant's step-son and the living conditions in Haiti, the AAO finds that the applicant's wife would experience extreme hardship if she were unable to provide suitable healthcare for her children.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship in the event that the applicant's wife were to join him to live in Haiti. However, the applicant failed to establish that his wife would experience extreme hardship if she were to remain in the United States without him. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.