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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: MEXICO CITY (PANAMA)

Date: **AUG 05 2008**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, Mexico, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be 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 seeking admission into the United States by fraud or willful misrepresentation; and under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant's spouse is a citizen of the United States. 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 April 26, 2006. The applicant filed a timely appeal.

On appeal, counsel indicated that she would need 30 days after receipt of a Freedom of Information Act request in which to submit a brief and/or additional evidence. Following this initial request, counsel was granted until August 28, 2006, and then until the last week in July 2007, in which to submit a brief and/or additional evidence. On May 20, 2008, the AAO faxed a request to counsel to provide a brief and/or additional evidence. As of this date, no brief or additional evidence has been submitted into the record. Thus, the record as constituted is complete.

The AAO will first address the findings 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 in 2002 the applicant admitted to gaining entry into the United States by presenting to an immigrant inspector a passport that she had bought for \$12,000. Based on the record, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, her identity, so as to gain admission into the country.

With regard to unlawful presence, section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, departs the country and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

The applicant gained admission into the United States in June 2002 based upon a willful misrepresentation; she departed the United States in 2005. She, therefore, accrued over two years of unlawful presence. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now consider whether the grant of a waiver is warranted.

The section 212(i) waiver for fraud and misrepresentation states 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 waiver of unlawful presence is found in section 212(a)(9)(B) of the Act:

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

Waivers under both sections 212(i) and 212(a)(9)(B)(v) of the Act require the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her mother-in-law 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 determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in Guyana. 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, among other documents, birth certificates, letters, and a marriage certificate.

In his waiver letter, the applicant’s husband stated the following. He misses his wife, who has left him for only a few days now. His wife had cared for his mother as she has a degenerated hernia disc in her back, making body movement very difficult. He has an extra strain attending to the daily chores of managing the house, which his wife had relieved him of. His wife had shopped, cooked, cleaned, and made it possible to survive on his income. The work his wife performed would require more than one person. His wife was company for his mother. He worries about his mother while he is at work. He looked forward to starting a family and worries about his wife, who is so far away. He read that public services are deficient in Guyana and bribes must be paid for attention, that there is flooding, that crime flourishes, and that health care is deplorable. His own health is going to suffer worrying about his wife’s safety and welfare.

The October 10, 2005 letter by [REDACTED] conveyed that the applicant’s mother-in-law is a patient, and was diagnosed with polycythemia vera, depression, and degenerative disc disease.

In a note dated September 7, 2005, [REDACTED] indicated that the applicant’s mother-in-law has lumbar disc disease and depression.

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

The AAO finds that the record fails to establish extreme hardship to the applicant’s spouse if he remains in the United States without the applicant.

Although hardship to the applicant’s mother-in-law is not a consideration under section 212(i) or section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant’s husband as a result of his concern about the well-being of his mother is a relevant consideration.

The applicant’s husband conveyed that his wife cared for his mother, who has been diagnosed with degenerative disc disease, and that he is worried about leaving his mother alone. The applicant, however, has not submitted documentation that would show exactly what care his mother needs or that the applicant’s husband or other family members are unable to make other arrangements to provide care for their mother. Going on record without supporting documentary evidence is not sufficient for purposes 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)).

Family separation is important in determining hardship. Courts 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 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. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (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.

The record conveys that the applicant’s husband is very concerned about separation from his wife and its impact on their future. The applicant conveyed that her husband would not be able to visit her often because it would jeopardize his job. 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 husband, if he 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 he will experience is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The record is insufficient to establish that the applicant’s husband would experience extreme hardship if he were to join his wife to live in Guyana.

The conditions in the country where the applicant’s qualifying relative would live if he or she joined the applicant 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 claims that finding employment in Guyana is difficult. Court and BIA decisions, however, have held that difficulty in finding employment is insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v.*

INS, 644 F.2d 1354, 1356 (9th Cir. 1981) (“difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment”); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment in the Philippines is not extreme hardship).

It is noted that prior to coming to the United States, the applicant had been employed as a school teacher in Guyana. There is no evidence in the record that she would be unable to return to that profession.

The applicant's husband stated that Guyana has high crime, a poor health care system, corruption, and is subject to flooding. The AAO finds that, as shown in *Matter of Ige*, political and economic conditions alone do not justify a finding of extreme hardship unless other factors such as advanced age or severe illness combine with such factors.

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 not been met to establish extreme hardship. 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 sections 212(i) or 212(a)(9)(B)(v) 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 application for waiver of grounds of inadmissibility 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.