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U.S. Citizenship
and Immigration
Services

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FILE: Office: CALIFORNIA SERVICE CENTER Date: **AUG 18 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 Director of the California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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. The applicant's spouse, [REDACTED], is a naturalized citizen of the United States and his mother is a lawful permanent resident. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated May 5, 2006. 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.

Counsel stated that during the adjustment interview [REDACTED] admitted to gaining admission into the United States in 1994 by presenting to an immigration inspector a fraudulent passport. *Brief in Support of Appeal, dated May 31, 2006*. The waiver application reflects that [REDACTED] is inadmissible for "misrepresentation at entry." *Application for Waiver of Ground of Excludability, Form I-601*. Based on counsel's statement in the brief and the admission in the Form I-601, the AAO finds that [REDACTED] is inadmissible under section 212(a)(6)(C) for gaining admission into the United States by willfully misrepresenting a material fact, his identity.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation and 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.

The waiver under section 212(i) of the Act requires 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 an applicant and to 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 [REDACTED] and his child will be considered only to the extent that it results in hardship to a

qualifying relative, who in this case is the applicant's naturalized citizen spouse and his lawful permanent resident mother. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

On appeal, counsel states that *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), *Matter of Shaughnessy*, 12, I&N 810 (BIA 1968), and *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), discuss the factors to consider in determining whether there is extreme hardship. Counsel asserts that the director erred in stating that the hardship of the applicant's wife would not rise to the level of extreme hardship. He states that in denying the waiver application the director relied on cases that are factually different from the one presented here, and applied the higher standard of exceptional and extremely unusual hardship rather than extreme hardship. Counsel asserts that the director imposed a standard of extreme hardship that is impossible to meet and undermines the letter and spirit of the Act, and failed to consider all of the relevant factors in the aggregate in the hardship determination.

"Extreme hardship" is not considered a definable term of "fixed and inflexible meaning" and establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez* at 565. In the case, the Board of Immigration Appeals (BIA) lists the factors it considers relevant in determining whether an applicant has established extreme hardship to a qualifying relative 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.

Counsel is correct in stating that hardship factors must be considered individually and then in the aggregate in determining whether extreme hardship exists. 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 qualifying relative must be established in the event that the qualifying relative remains in the United States without the applicant, and in the alternative, that the qualifying relative joins the applicant to live in the applicant's native country. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel states that the extreme hardship factors shown here are _____ and his wife's house in New York for which the applicant primarily pays the mortgage; _____ family members residing in the United States, her lawful permanent resident parents and brother; the chronic coronary artery disease and bypass surgery of _____'s father, and how her father's condition would worsen by separation from his

only daughter; close relatives in the United States, his lawful permanent resident mother and U.S. citizen sister; the emotional and financial dependence of the applicant's wife on her husband; their lack of family ties to Guyana; the minimal skills the applicant's wife possesses in finding suitable employment in Guyana; and Guyana's poor economy.

In her affidavit, the applicant's wife states that she married the applicant on January 28, 2001 in New York, and that they have a U.S. citizen child born on May 29, 2004. She states that her husband owns their house and pays the mortgage and other household expenses. She indicates that her husband has never been arrested and is not a security threat to the community, they pay income taxes and have never received public assistance, all of their close family members reside in the United States, they have no ties to Guyana, her father has chronic coronary artery disease and had bypass surgery, her husband is gainfully employed as a jeweler, she is completely dependent on her husband for financial and emotional support, and her husband cares for their child while she works as a babysitter. She stated that her child would experience extraordinary and extreme hardship if separated from her father; and if her child lived in Guyana, would be deprived of health benefits and an education in the United States. The applicant's wife contends that Guyana has chronic economic stagnation, with understated unemployment of 9.1 percent and a high inflation rate. *Affidavit by Applicant's wife, sworn on October 14, 2005.*

The applicant's son was born on May 29, 2004. *Certificate of Birth Registration.*

The Washington Mutual Home Loan Statement for September 2005 reflects \$1,362.96 as the monthly amount due.

The father of the applicant's wife is being treated for coronary artery disease and he had bypass surgery. Her mother provides care for her father. *Letter by [REDACTED] M.D., dated December 19, 2003.* Her parents reside in the state of Minnesota. *Biographic Information, Form G-325A.*

The document describing Guyana reflects economic conditions there in 2001-2002, and indicated that the economy exhibited moderate economic growth, it had an estimated 5.7 percent inflation rate (2004 est.), and a 9.5 percent (understated) unemployment rate in 2002.

The applicant is a part-time, self-employed jeweler. *Biographic Information, Form G-325A.* His gross receipts were \$14,520 in 2004, \$12,000 in 2003, and \$11,180 in 2002. In 2004, his wife's gross receipts were \$15,600 and she earned \$1,754 in wages; for the years 2003 and 2004, her gross annual receipts were \$15,600. *Form 1040, U.S. Individual Income Tax Return for 2004, 2003, and 2002.*

Since 2002, the annual gross income of the applicant's wife has been \$15,600. If the applicant's wife and child remained in the United States without him, her household would consist of two persons. The record contains the Affidavit of Support signed by the applicant's wife in August 2005. The 2005 Health and Human Services Federal Poverty Guidelines show \$12,830 as the poverty line requirement for a household of two persons; and to sponsor an immigrant, the I-864 Affidavit of Support requires 125 percent of the poverty line requirement, which in this case is income of \$16,037 for a two person household. In 2008, the poverty line requirement for a two person household is \$14,000, and for sponsoring an immigrant it is \$17,500. Because the annual income of the applicant's wife has consistently fallen below the required immigrant

sponsorship level, the AAO finds that she would experience extreme hardship if she remained in the United States without her husband's income.

claims that she would experience extreme hardship if she were to join her husband in Guyana, claiming that Guyana has chronic economic stagnation, with understated unemployment of 9.1 percent and a high inflation rate; and counsel claims that [REDACTED] would not find suitable employment in Guyana, given her limited skills. 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 Anderson*, 16 I & N Dec. 596 (BIA 1978). The document regarding Guyana's economy reflects that six years ago the country had a 9.5 percent (understated) unemployment rate, but does not suggest that at the present time the applicant and his wife would be unable to earn a living wage in Guyana. No evidence reflects that they have any physical or mental impairment which would restrict their employment or limit the type of employment they could perform in Guyana. There are no unique reasons why [REDACTED] and his wife will be unable to find employment upon returning to Guyana. Furthermore, a claim of difficulty in finding employment and inability to find employment in one's trade or profession, although a relevant factor, is not sufficient to justify a grant of relief in the absence of other substantial equities. *Matter of Piltch*, 21 I&N Dec. 627, 631 (BIA 1996). And "[g]eneral economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

The applicant's wife asserts that she will experience extreme hardship if separated from her father. U.S. 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, the Ninth Circuit 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. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In another decision, 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. *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985). The Third Circuit affirmed a BIA decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child." *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985).

The applicant's wife is concerned about separation from her family members in the United States. 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 [REDACTED], 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 defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Perez, Sullivan, Dill, supra.*

The applicant's wife claims that her child would be deprived of health benefits and an education in the United States if they moved to Guyana. Although hardship to [REDACTED]'s son 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 their child, is a relevant consideration. Although [REDACTED] states that her child will be deprived of an education in the United States, no facts were presented suggesting educational hardship. Furthermore, the fact that educational opportunities for a child are better in the United States than in the alien's homeland does not establish extreme hardship. *See Matter of Kim*, 15 I & N Dec. 88 (BIA 1974); *see also Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Finally, with regard to the loss of employee benefits, the loss of a job along with its employee benefits is found not to be an extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). Because health insurance is offered as an employee benefit, its loss would not constitute extreme hardship.

The applicant makes no claim of hardship to his lawful permanent resident mother if she were to join him to live in Guyana.

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 the applicant's wife in the event that she were to join her husband in Guyana. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has not been established.

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 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.