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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date DEC 05 2008

IN RE:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script that reads "Michael Shumway". Below the signature is a small handwritten mark that appears to be "fs".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 having attempted to procure admission into the United States by fraud or willful misrepresentation on March 4, 1992. The applicant is married to a lawful permanent resident and has two lawful permanent resident children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his family.

The director found that the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility in the United States. The application was denied accordingly. *Decision of the Director*, dated July 21, 2006.

On appeal, the applicant submits documents regarding the medical condition of his wife. *Form I-290B*, dated August 15, 2006.

The record indicates that on March 4, 1992, the applicant presented a false U.S. passport in an attempt to gain entry into the United States at the port of entry in San Juan, Puerto Rico.

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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. However, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S.

citizen or lawful permanent resident spouse and/or parent. Hardship the applicant experiences or his children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant 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. *Id.* at 566.

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). 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Guyana and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant states that his spouse and daughter came to the United States because of their medical history and that his wife is still very sick. *Applicant's Statement*, undated. He states that his wife suffers from a history of hypertension and diabetes and would not be able to accompany him to Guyana. The applicant states that Guyana does not have a dialysis machine to treat his spouse's condition. The applicant also states that his daughter was recently diagnosed with cancer after giving birth to the applicant's grandchild. The applicant states that he would not be able to support his spouse and children from Guyana because he would not be able to find employment given that the unemployment rate is so high and the economic conditions are not good. *Id.*

The applicant's spouse states that she and the applicant have been married for twenty-seven years and that through most of their marriage she has suffered through diabetes and hypertension, as well as her daughter's sickness. *Spouse's Statement*, undated. She states that the stress of their family's immigration problems has taken a toll on her health and that recently that her daughter was diagnosed with cancer. She states that if her husband is removed from the United States she will suffer extreme hardship because she will not be able to maintain her family and deal with her visits to her doctor. *Id.*

The record contains copies of the applicant's spouse and daughter's medical visa, showing that they were admitted to the United States in 1990 so that the applicant's daughter could receive medical treatment. The record also contains the daughter's medical records from 1990 and 1991 showing that she was being treated for nephrotic syndrome in New York City. The record also contains many medical records pertaining to the applicant's spouse. These records include blood test results and a mammogram report showing that a benign cyst was found in the applicant's spouse's left breast in May 2006. Aside from the mammogram report, the other records are not sufficiently legible to serve as probative evidence of hardship. The AAO notes that none of the medical documentation in the record indicates legibly what the applicant's spouse is suffering from or that she requires any kind of treatment. In addition, there is no record of the applicant's daughter's cancer diagnosis or any updates on her condition.

The applicant also submitted the Central Intelligence Agency's World Fact Book description of country conditions in Guyana. The AAO notes that although this report indicates that Guyana's economy is slowing and that the unemployment rate was reported as 9.1 percent in 2000, it does not give specific information on the ability of someone in the applicant's situation to find employment in Guyana.

In the applicant's case, he is claiming that his wife would suffer extreme hardship as a result of his inadmissibility because of her and their daughter's medical condition. The applicant has submitted documentation in an attempt to establish that his spouse suffers from diabetes and hypertension and that his daughter also has a medical condition, however these documents do not allow for the AAO to make a determination of extreme hardship because they lack any details about their specific conditions and their course of treatment. Thus, the AAO finds that the current record lacks the documentation to show that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.