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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: DEC 15 2001

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:

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).

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 the Dominican Republic 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 procured admission into the United States by fraud or willful misrepresentation on November 1, 2005. The applicant is married to a U.S. citizen and states that he has a U.S. citizen child.¹ He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that a bar to his admission to the United States as a lawful permanent resident would result in extreme hardship to his U.S. citizen or lawful permanent resident spouse and/or parent. The application was denied accordingly. *Decision of the Director*, dated July 24, 2006.

On appeal, counsel asserts that the applicant demonstrated that his spouse would suffer extreme hardship if his application were denied. *Form I-290B*, dated August 7, 2006. Counsel states that the director failed to consider that the applicant's spouse has not lived in the Dominican Republic for over twenty years and that if she were to return, she would not know where to live or work. In addition, counsel states that the director did not give enough weight in his analysis to the emotional hardship the applicant's spouse will suffer if she is separated from the applicant. Counsel also states that the director did not consider that it had been more than five years since the applicant's misrepresentation, that the applicant's U.S. citizen child would suffer extreme hardship, that the applicant's spouse was undergoing fertility treatment with the hope of having a child, and that the applicant's spouse would suffer financially as a result of the applicant's inadmissibility. *Id.*

The record indicates that on November 1, 2005, the applicant presented the passport of another person at a U.S. consulate in an attempt to obtain a visa to the United States.

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.

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

¹ The AAO notes that although the applicant states that he has a U.S. citizen child, the record contains no evidence of this child or that the child is in fact a U.S. citizen.

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 due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Dominican Republic or 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 record of hardship includes medical documentation concerning the applicant's fertility treatment, a statement from the applicant's spouse and a statement from the applicant. The medical documentation submitted includes: a letter from Oxford Health Plan, dated April 27, 2006, stating that the applicant's spouse's fertility treatment had been approved through her health insurance; an itemized list of expenses for the spouse's fertility treatment from April 27, 2006 to July 26, 2006; a copy of the Montefiore Medical Center financial policy; a Memorandum of Understanding from Montefiore Medical Center, stating that the maximum lifetime benefit for infertility services was \$10,000; and a Patient Coverage Waiver, stating that the applicant's spouse understands she will be responsible for any denied claims or non-covered services under her health insurance.

The applicant's spouse states that she has been living with the applicant since July 2004 and if his application were denied it would affect them enormously. *Spouse's Statement*, dated November 3, 2005. She also states that if forced to return to the Dominican Republic they will both suffer extreme hardship. She states that neither she nor her spouse has any property in the Dominican Republic and they do not know where they would live. She states that in the Dominican Republic they would face many economic difficulties, but she cannot envision living life without the applicant. She also states that if she stays in the United States without the applicant, she will suffer extreme emotional hardship because they are very close and have good communication. The applicant states that he apologizes for entering the United States with a fraudulent document, but that he only did so in order to be with his wife who was a lawful permanent resident at the time and because the petition she filed on his behalf was extremely delayed. *Applicant's Statement*, dated November 3, 2005.

The AAO notes that counsel did not submit documentation to support the statements made regarding extreme emotional or financial hardship. In addition, no documentation was submitted in regards to the assertions made about life in the Dominican Republic and the applicant's spouse's ability to relocate to the Dominican Republic. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the evidence submitted regarding the applicant's spouse's fertility treatment does not establish extreme hardship to the applicant's spouse. The applicant provides no documentation to show that she could not receive fertility treatment in the Dominican Republic. Thus, the AAO finds that the applicant has not shown that his spouse would suffer extreme hardship as a result of relocation to the Dominican Republic.

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.