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U.S. Citizenship  
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FILE: [REDACTED] Office: BOSTON, MA (PROVIDENCE) Date: FEB 28 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Boston Massachusetts (Providence), denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 24-year-old native of St. Maarten who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative immigrant visa petition filed on his behalf by his spouse. The applicant presently seeks a waiver of inadmissibility in order to remain in the United States and adjust his status to lawful permanent resident.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. On appeal, the applicant contends that his spouse would face extreme hardship if he were not permitted to remain with her in the United States. *See Applicant's Appeal Brief* (citing report by [REDACTED]).

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on the fact that he had previously submitted a fraudulent application for adjustment of status. The applicant does not dispute this finding, and admits having submitted a fraudulent application in an addendum to Part 3, Item 10 of Form I-485, Application to Register Permanent Residence or Adjust Status. The AAO concludes that the district director was correct in finding that the applicant is inadmissible and his determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant

himself is not a permissible consideration under the statute. Hardship to an applicant's child is also not a relevant consideration.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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 applicant's spouse, [REDACTED] is a 22-year-old U.S. citizen. She has known the applicant since she was 14. They had a child in 2002, began living together in 2003 and married in 2005. *See* Statement of the Applicant's Spouse. The applicant's spouse is employed as a nurse. *Id.* The couple's daughter resides with the applicant's parents in St. Maarten. *Id.* The applicant's spouse claims that she would face hardship should the waiver application be denied on account of her health, her financial situation, and the separation from her husband. *Id.* In support of her claim, the applicant submits a report by [REDACTED], a psychologist. [REDACTED]'s report provides a detailed account of the applicant's spouse's circumstances, including the premature birth of her daughter and her family relationships, and indicates the applicant's spouse suffers from depression. *See* Report of [REDACTED]. She concludes that the possibility of the applicant's removal from the United States has caused his spouse a high level of anxiety. *Id.* She further states that the applicant's spouse would not be able to pursue her studies and become a licensed nurse without the applicant's financial and emotional support. *Id.* [REDACTED] concludes that it would be "most beneficial" for the applicant's spouse "if she is allowed to continue her present way of life." *Id.*

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. The AAO recognizes that, as a U.S. citizen, the applicant's spouse is not required to relocate with the applicant to St. Maarten. The AAO notes, however, that the couple's daughter is residing in St. Maarten separated from the applicant and his spouse. The AAO finds that the applicant has not established that his spouse would face extreme hardship should she decide to relocate to St. Maarten. There is no evidence in the record that the applicant's spouse could not find employment in St. Maarten. Also, there is no evidence in the record to suggest that she could not adjust to life in St. Maarten with the applicant, their daughter and his

family. Likewise, the applicant has failed to establish that his spouse would face extreme hardship should she remain in the United States. The applicant's spouse is well-employed as a nurse. She has family ties in the Providence area. Although the AAO notes the psychologist's finding that separation from the applicant could exacerbate the applicant's spouse's depression, there is no evidence to suggest that the applicant's spouse could not overcome it given her age and circumstances. There is also no evidence in the record to suggest that the hardship claimed by the applicant is greater than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship. Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 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 rests with the applicant. 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.