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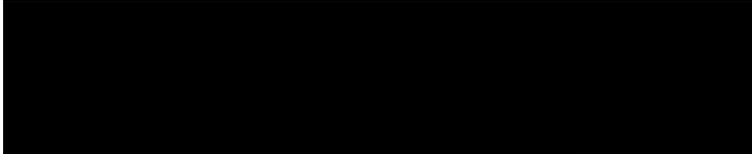
U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: FEB 28 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:



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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 Cuba 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. The applicant is married to a lawful permanent resident and 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 spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated February 16, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed, to meet the burden of establishing extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from [REDACTED], Psychiatrist, dated April 3, 2006; a patient information leaflet for the drug amitriptyline, dated April 5, 2006; a medical appointment card for the applicant's spouse; and a police clearance letter from the Miami-Dade Police Department for the applicant. The entire record was reviewed and considered in rendering this decision.

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 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 record reflects that the applicant used a Cuban passport with a United States B-1/B-2 visa that had been photo switched and data altered to attempt to enter the United States on June 4, 2002. *See Inspections Memorandum*, dated June 4, 2002; *Form I-877, Record of Sworn Statement; Form I-275, Withdrawal of Application for Admission/Consular Notification; and copy of Cuban passport with United States B-1/B-2*

visa. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Cuba or 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.

If the applicant's spouse travels with the applicant to Cuba, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Cuba. *Form I-551, Permanent Resident Card, for the applicant's spouse*. The record does not address what family members, if any, the applicant's spouse may have in Cuba. The AAO also observes that the record is unclear as to when the applicant's spouse began living in the United States, and what country she was living in prior to her residency in the United States. The record does not address what language abilities the applicant's spouse has. While the record includes documentation that the applicant's spouse is receiving psychiatric treatment in the United States, the record fails to include information about whether such treatment is available in Cuba. *See letter from [REDACTED] MD, Psychiatrist*, dated April 3, 2006. When looking at the aforementioned factors, the AAO finds that the applicant has not demonstrated that his spouse would suffer extreme hardship if she were to reside in Cuba.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship.¹ Counsel for the applicant states that the applicant's spouse depends on her husband,

¹ The AAO notes that while the applicant married his spouse on June 3, 1993 in Cuba and she received her lawful permanent residency in the United States on December 14, 2001, the applicant stated under oath on June 4, 2002 that his spouse did not live in the United States and that he did not have any immediate family

both financially and emotionally. *Attorney's brief*. The AAO notes that the record fails to include tax statements, letters of employment or affidavits to support counsel's claim that the applicant's spouse is financially dependent on him. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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). However, the applicant's spouse has a diagnosis of Major Depression, Recurrent, 2nd Episode and is taking psychotropic medications due to her severe symptoms of depression, hopelessness, lack of concentration and poor memory. *See letter from [REDACTED] MD, Psychiatrist*, dated April 3, 2006; *psychiatrist's appointment card*, dated May 17; and *patient information leaflet*, dated April 5, 2006. Many of these symptoms have not improved, but have increased due to the immigration difficulties confronted by the applicant. *Letter from [REDACTED] MD, Psychiatrist*, dated April 3, 2006. The condition of the applicant's spouse could dramatically improve if these difficulties were resolved in the applicant's favor. *Id.* The AAO acknowledges the mental health issues of the applicant's spouse and finds the record to establish that she suffers from a significant health condition that would result in extreme hardship if the applicant were removed from the United States.

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 under section 212(a)(6)(C) 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.

members who were citizens or lawful permanent residents of the United States. *See marriage certificate; lawful permanent residency card of the applicant's spouse; and Form I-877, Record of Sworn Statement.* According to the Form I-601, Application for Waiver of Grounds of Inadmissibility, the applicant's spouse lives in the United States with the applicant. *Form I-601*, signed January 18, 2006.