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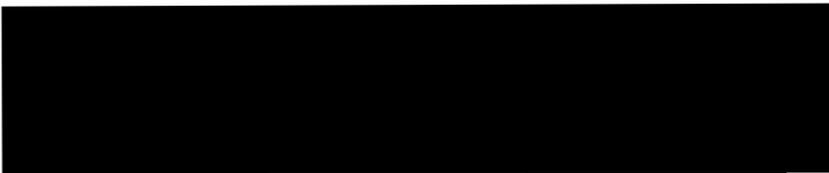


FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: JUN 02 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:



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 District Director, Mexico City, 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 last entered the United States on November 12, 1990 as a visitor for pleasure. In 2002 she returned to Trinidad, where she had resided before coming to the United States in 1990, and applied for an immigrant visa. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant has a U.S. citizen son and U.S. citizen husband and is the beneficiary of an approved Petition for Alien Relative. She 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 her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director*, dated April 25, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to give sufficient weight to the hardship that would result from family separation. Specifically, counsel states that the applicant’s son and daughter-in-law have suffered hardship since relocating to Trinidad with the applicant and abandoning their career opportunities and family ties in the United States. *See Brief in Support of Appeal* at 3. Counsel further states that the applicant’s husband has suffered financial hardship resulting from the costs of traveling to Trinidad to visit the applicant and is suffering physical and emotional hardship due to the stress of being separated from his spouse and to his medical conditions, including hypertension and high cholesterol. *Brief* at 4. Counsel refers to the Board of Immigration Appeals (BIA) decision in *Matter of Anderson*, 16 I&N Dec. 597 (BIA 1978), and *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), to support the assertion that the hardships to the family, when considered in the aggregate, amount to extreme hardship, and further states, “the analysis of hardship to U.S. citizen children *must* be careful and individualized.” *Brief* at 5.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 AAO notes that the record contains several references to the hardship that the applicant's son and his family are experiencing because they have relocated to Trinidad with the applicant. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son and his family members will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-seven year-old native and citizen of Guyana who has resided in the United States since November 12, 1990, when she entered the United States as a visitor for pleasure. The applicant's husband is a fifty-two year-old native of Trinidad and naturalized U.S. Citizen whom she married on March 24, 2005. He currently resides in Miami, Florida, where the applicant resided from 1990 to 2002. The applicant previously resided in the United States as a lawful permanent resident from 1974 to 1982, when she moved to Trinidad and abandoned her lawful permanent resident status. The applicant had obtained this status on November 21, 1974 through marriage to a U.S. Citizen. She then admitted under oath when questioned by immigration authorities on January 15, 1975 that she had ceased to reside with her U.S. Citizen husband in May 1974, six months before she applied for an immigrant visa in

Halifax, Nova Scotia. Records indicate that the applicant stated on her application and during her interview for her immigrant visa that she was still residing with her U.S. Citizen spouse in Brooklyn, New York, and planned to continue to reside with him. Because of this material misrepresentation, the applicant was found to be inadmissible and an application for adjustment of status filed by the applicant in 1988 was denied on February 16, 1990. *See Decision of Acting District Director, New York, NY*, dated February 16, 1990.

Documentation submitted with the waiver application includes a letter from the applicant's son and an affidavit from the applicant's husband. Counsel submitted additional documentation with the appeal, including birth certificates for the applicant's son and his family, a letter from the applicant's daughter-in-law, a note from the applicant's husband's doctor, a letter from the applicant's husband's employer, copies of bills and receipts for money transfers to the applicant, and photographs of the applicant and her family members. The entire record was reviewed and considered in arriving at a decision on the appeal.

The district director concluded that the applicant had failed to demonstrate that her husband or son would suffer extreme hardship if she were denied admission to the United States. The district director stated that the waiver application was denied because the applicant "obtained a green card by fraud and resided in the USA illegal (sic) for more than a year." *See Decision of District Director* at 3. The AAO notes that although the decision of the district director refers to section 204(c) of the Act, 8 U.S.C. § 1154(c), the applicant was never found to have entered into a marriage for the purposes of evading the immigration laws. Rather, a previous application for adjustment of status filed by the applicant was denied by the Immigration and Naturalization Service (INS, now CIS) because the applicant was found to have willfully misrepresented a material fact when she applied for her immigrant visa in 1974 and stated that she was still living with her husband and planned to continue residing with him. *See Decision of Acting District Director, New York, NY*, dated February 16, 1990.

The AAO further notes that although the district director found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, it appears the applicant is not inadmissible under this section of the Act. The district director states that the applicant was living unlawfully in Miami, Florida from November 1990 to October 2002. The record indicates, however, that the applicant filed an Application to Register Permanent Residence or Adjust Status (I-485) on February 17, 1998. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of authorized stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations* dated June 12, 2002. A review of the record indicates that the I-485 application was still pending at the time the applicant left the United States in 2002. The applicant therefore accrued unlawful presence only from April 1, 1997 to February 17, 1998, the date of her proper filing of Form I-485. The applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant was barred from again seeking admission within three years of the date of her departure, and is therefore no longer barred from seeking admission under this section.

Counsel asserts that the applicant's family members will suffer extreme hardship beyond the common results of deportation if she is denied admission to the United States. Counsel states that the applicant's son and his

wife were forced to relocate to Trinidad with the applicant and have suffered hardship as a result of separation from family members in the United States and having to leave education and career opportunities. *See Brief in Support of Appeal* at 3. Counsel also states that the applicant's son is suffering from depression as a result of these hardships. *Id.* As noted above, any hardship the applicant's son has experienced due to relocating to Trinidad is not relevant to determining whether the applicant has established extreme hardship to a qualifying relative, except as it may affect the applicant's husband, who is the only qualifying relative.

Counsel further asserts that the applicant's husband "has suffered extreme hardship beyond financial hardship." Counsel states that the applicant's husband cannot relocate to Trinidad because he must have access to medicine and treatment for his high blood pressure and high cholesterol. *Brief* at 4. The AAO notes that the only evidence concerning his medical condition on the record is a hand-written note from his doctor that is difficult to read, but appears to state that he is being treated for hypertension, diabetes mellitus, and hyperlipidemia. *See note from [REDACTED]* dated May 16, 2006. No other evidence was provided to explain the medical conditions the applicant's husband suffers from, such as a legible letter in plain language from his physician describing his diagnosis, any treatment and medication needed, and his prognosis for recovery. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, no evidence was submitted to support the assertion that the applicant would not have access to any medications he needs in Trinidad. The evidence on the record does not support counsel's assertions that the applicant's husband suffers from a serious medical condition for which treatment would be unavailable if he relocated to Trinidad with the applicant.

Counsel additionally asserts that the applicant's husband is suffering financial hardship due to separation from the applicant. The applicant's husband states in his affidavit that he is "forced to deal with an extreme situation by having to maintain financially not only [his] wife in Trinidad, but also her son, who has recently married, and his wife." *See affidavit of [REDACTED]* dated October 1, 2005. The AAO notes that the applicant's son and his wife are U.S. Citizens and that they chose to relocate to Trinidad with the applicant. The applicant's son states that because of the "out-of-control crime problems" in Trinidad, no one in the family was willing to let the applicant stay in Trinidad by herself. *See letter from [REDACTED]* dated October 2, 2005. No evidence was submitted to document conditions in Trinidad or otherwise support an assertion that the applicant could not reside there by herself. The record does not establish that the applicant's son was forced to relocate to Trinidad, where he must be supported financially by the applicant's husband. There is no evidence that circumstances prevent him from returning to the United States, resuming his employment there, and contributing to the financial support of the applicant.

Counsel submitted documentation in support of the claim of financial hardship to the applicant's husband, including a letter indicating he earns \$11 per hour working as a night auditor for a hotel, copies of credit card statements and wire transfers indicating that the applicant is being supported financially by her husband, and copies of telephone bills listing calls to the applicant in Trinidad. No further evidence was submitted documenting the applicant's husband's income and expenses. The evidence submitted documents expenses incurred by the applicant's husband while he is supporting the applicant in Trinidad, but does not support counsel's claim that these expenses amount to extreme hardship. Rather, the financial burden of supporting the applicant appears to be a common result of removal or exclusion, and the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v.*

Jong Ha Wang, 450 U.S. 139 (1981). Further, there is no evidence that the applicant's husband, a native of Trinidad, could not relocate there and find employment comparable to his position as a hotel night auditor. Counsel asserts that the applicant's husband could not relocate there because he would not have access to adequate medical care, but, as noted above, no evidence was submitted to support this assertion. The record does not establish that the applicant's husband could not relocate to Trinidad rather than maintaining two households, one in Trinidad and one in the United States. 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).

Counsel also asserts that being separated from the applicant is causing the applicant's husband to suffer extreme emotional hardship and states, "separation from his wife and not being able to have a normal relationship with her has become increasingly stressful on both his emotional and physical state." *Brief* at 4. The evidence does not establish that any emotional hardship the applicant's husband is suffering is more serious than the type of hardship an individual would normally suffer when faced with the prospect of separation from his spouse. Although the depth of his concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

The emotional, physical, and financial hardship the applicant's husband would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

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. 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.