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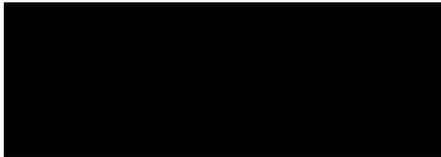
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
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FILE: Office: CALIFORNIA SERVICE CENTER Date **JUN 09 2008**

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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Haiti who was determined to be 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), for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is an applicant for adjustment of status under the Haitian Refugee Immigration Fairness Act (HRIFA) 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 naturalized U.S. citizen spouse.

The record reflects that the applicant presented a passport bearing the name [REDACTED] on June 5, 1993 in an attempt to procure admission to the United States. The applicant was denied admission and referred to exclusion proceedings. The applicant was ordered deported in absentia on February 23, 1994. The applicant's motion to reopen was denied on April 23, 1998. The applicant remained in the United States and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) under HRIFA on January 24, 2000. The applicant subsequently filed an Application for Waiver of Grounds of Excludability (Form I-601).

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of the Director*, dated April 13, 2006.

On appeal, counsel contends that the applicant responded to requests for evidence completely, and that the affidavits and other documents submitted demonstrate that the applicant's spouse will suffer extreme hardship if the waiver application is not granted. *See Form I-290B, Brief in Support of Motion to Reopen/Reconsider*, undated. Counsel asserts that the applicant's spouse suffers from medical problems and is financially dependent on the applicant. *Id.* Counsel contends that horrific conditions prevalent in Haiti will result in extreme hardship to the applicant's spouse if she relocates there. *Id.* Counsel further asserts that in accordance with 8 C.F.R. 245.15(e)(2), the applicant's fraud/willful misrepresentation should not be deemed a negative factor outweighing the positive discretionary factors in favor of granting the applicant adjustment of status. *Id.*

In support of the appeal, counsel submits a brief. The record also contains affidavits from the applicant and his spouse; medical records for the applicant's spouse; financial, employment and tax records; and identification records. The entire record was reviewed and considered in rendering a decision on the appeal.

As stated above, the record reflects that the applicant presented a passport bearing the name Schiller Bodkin on June 5, 1993 in an attempt to procure admission to the United States. The applicant has not disputed that he is inadmissible under section 212(a)(6)(C) of the Act.

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 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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).

U.S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

In their affidavits, the applicant and his spouse state that the applicant's spouse has "numerous health problems including diabetes, high blood pressure and she has been unable to work since sustaining a serious leg injury on or about February 26, 2001." They assert that the applicant is the "sole source of financial support" for his spouse. They contend that they are completely acclimated to the American way of life and have an extremely close and loving relationship. They further state that the health of the applicant's spouse prevents her even from traveling to Haiti, and that removing the applicant to Haiti "would be tantamount to a death sentence" because of the chaotic political situation there.

Although the evidence in the record does not support the applicant's assertion that his spouse is unable to work because of a leg injury, the AAO finds that the applicant's spouse would suffer extreme hardship if she chooses to remain in the United States. The medical records submitted by the applicant support the assertion that the applicant's spouse suffers from diabetes and high blood pressure as claimed. Although it is unclear from the record what injury the applicant's spouse suffered on or about February 26, 2001, or the impact that injury has had on her ability to work, the record does show that the applicant's spouse's earnings of \$600 in 2002 was significantly less than earnings from previous years (i.e. \$14,412 in 1998). The AAO finds that the emotional hardship of separation combined with financial hardship (possibly resulting in inadequate healthcare) to the applicant's spouse if she remains in the United States rises to the level of extreme hardship.

However, the applicant has failed to demonstrate that his spouse would suffer extreme hardship if she relocates to Haiti. The applicant's spouse is a native of Haiti. The applicant has submitted voluminous medical records, but these records are not accompanied by an explanation from a physician or other medical professional or an assessment as to the impact relocation to Haiti would have on the health of the applicant's spouse. The applicant has submitted no independent evidence to support his claim that his spouse cannot travel to Haiti or that appropriate care for her medical conditions is not available there. There is also no evidence in the record, other than the general assertions of counsel, the applicant and his spouse, documenting current political and economic conditions in Haiti or demonstrating specifically that the applicant and his spouse will be unable to support themselves financially if they relocate there. Although the assertions of the applicant and his spouse have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without documentary evidence to support a claim, counsel's assertions 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).

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 his U.S. citizen spouse as required under section 212(i) of the Act. 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 rests 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.