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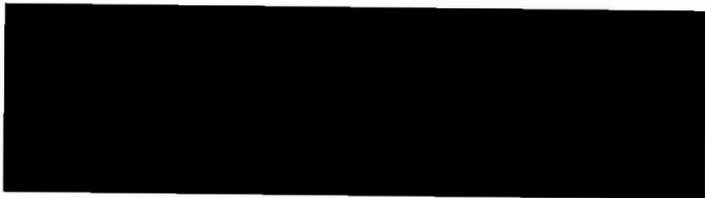
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 14 2008**

IN RE: [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), 8 U.S.C. section 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 "John F. Grissom".

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 Haiti who was found 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 to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and his lawful permanent resident father.

The record reflects that the applicant procured admission to the United States using fraudulent documents in April 1992. The applicant filed a Request for Asylum in the United States (Form I-589) on June 2, 1994. The application was referred to an immigration judge in deportation proceedings on June 12, 1996. On February 5, 1998, the applicant was granted deferred enforced departure and his deportation proceedings were administratively closed. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) pursuant to the Haitian Refugee Immigration Fairness Act on or about March 29, 2000. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on January 3, 2005.

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 Director*, dated May 30, 2006.

On appeal, counsel contends that the California Service Center did not have “jurisdiction” to issue the decision. *Applicant’s Brief*, dated September 27, 2006 at 2. Counsel also asserts that because the applicant is a Haitian citizen who entered the United States with a false visa, 8 C.F.R. § 245.15(e)(2) must be considered in determining whether a favorable exercise of discretion is warranted. *Id.* at 4. Counsel observes that country conditions reports for 1993 demonstrate that Haiti was experiencing extreme violence and U.S. authorities were interdicting and repatriating Haitian migrants. *Id.* at 5. Counsel states that the applicant has demonstrated that his spouse would suffer extreme hardship if the waiver application is denied. *Id.* Counsel also asserts that the applicant’s involvement in his church demonstrates his good character. *Id.*

The record contains, among other documents, originals or copies of affidavits dated September 27, 2006 from the applicant and his spouse; U.S. Department of State Country Reports on Human Rights Practices for Haiti for 1993 and 2005; a letter dated September 17, 2006 from the applicant’s pastor; the warranty deed for the applicant’s house; documentation of joint tax returns filed by the applicant and his spouse for the years 2003-2005; a letter dated September 22, 2004 from [REDACTED], Human Resources Coordinator at Holiday Inn Select in Stamford, Connecticut, attesting to the applicant’s employment; and tax and financial records for the applicant from 1995-2000. The entire record was reviewed and considered in rendering this decision.

Counsel’s assertion that the California Service Center lacked jurisdiction to render a decision on the applicant’s waiver application is without merit. Counsel cites USCIS filing requirements to support this argument, but the filing requirements for Form I-601 waiver applications reflect only an administrative preference for location of filing. USCIS exerts universal jurisdiction over waiver applications and there is no statute, regulation or policy that precludes it from transferring adjudication of a waiver application from the office at which it was filed to another USCIS office.

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.

A waiver of inadmissibility under section 212(a)(6)(C) 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 applicant's U.S. citizen spouse and parents (although the applicant did not list his mother on his waiver application, there are indications in the record that both the applicant's parents are lawful permanent residents) are the only qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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. Although the applicant’s father is listed on the waiver application, it is noted the applicant has not asserted that his parents will suffer hardship as a consequence of his inadmissibility.

In his affidavit, the applicant states that he admitted at his adjustment interview that he entered the United States with a false passport. The applicant asserts that given present conditions in Haiti, there is a strong likelihood he will be kidnapped or killed there. He contends that his wife and daughter cannot return to Haiti due to these conditions, the poor educational system and the prevalence of child abuse and trafficking. In her affidavit, the applicant’s spouse reiterates the assertions made by the applicant. She also states that the applicant and her child are the only family she has. She asserts that the applicant helps her in every aspect of her life, and that she might end up on the street begging without him. She contends that she will suffer both financial and emotional hardship without him.

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.

The AAO recognizes that the applicant’s spouse would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, it has not been demonstrated that this hardship, when combined with other hardship factors, rises to the level of extreme hardship. The applicant’s spouse has asserted that she would suffer financial hardship, but she does not elaborate beyond stating that she “might end up on the street begging.” Although the employment status of the applicant’s spouse is listed as “student” on her 2003 joint tax return, it is unclear from the tax documentation for the years 2004 and 2004 if she was employed in those years or wholly dependent on the applicant’s income. The AAO notes that, according to the letter from [REDACTED] the applicant’s salary in 2004 was \$12.18 hourly, and that the applicant worked an average of 35 to 40 hours per week, which yields a maximum gross annual income of less than \$26,000. However, the applicant and his spouse listed more than \$52,000 in wages on their 2004 joint tax return. There is no evidence that the applicant’s spouse is unable or unqualified to work. The applicant has

not submitted a birth certificate or any other documentation substantiating the birth of his child. The AAO takes administrative notice that Haiti is a poor country in which 80% of the population lives below the poverty line, but this fact alone does not demonstrate that the applicant, an experienced engineer, would be unable to obtain employment there. *See* Central Intelligence Agency, *The World Factbook: Haiti*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha/html> (accessed November 11, 2008). Thus, the extent to which the applicant's spouse would suffer financial hardship in the applicant's absence has not been shown. Although the statements by the applicant and his spouse are relevant and have been taken into consideration, little weight can be afforded it in the absence of specific 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)). Furthermore, the mere inability to maintain one's present standard of living does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

The AAO acknowledges the importance of family separation as a factor, but also notes that the Ninth Circuit in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children, not the hardship involved in separating recently married adults. The AAO acknowledges the evidence of criminal violence and kidnapping in Haiti, but also notes that such violence has been decreasing in recent years due to efforts of the United Nations stabilizing force and the Haitian National Police. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices -2007: Haiti*. Though conditions in Haiti may be a source of concern to the applicant's spouse if the applicant returns there alone, there is insufficient evidence showing that the circumstances faced by the applicant's spouse's are different from most individuals separated as a result of removal or inadmissibility and they do not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also not demonstrated that his spouse would suffer extreme hardship if she relocated to Haiti. As stated above, the AAO acknowledges the evidence of general conditions in Haiti, but finds that there is insufficient specific evidence that the applicant's spouse would face extreme hardship there. The applicant's spouse is a native of Haiti and has indicated that she has no other family ties in the United States.

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 or lawful permanent resident parents as required under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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.