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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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#2

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 09 2008

IN RE: Applicant: [Redacted]

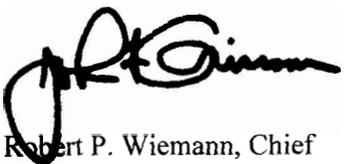
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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 Director, California Service Center, 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 35-year-old native and citizen of Cuba 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 was married in 2006 to a lawful permanent resident of the United States. The applicant presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States with her husband.

The director determined that the applicant was inadmissible, and that the denial of a waiver would not result in extreme hardship to her lawful permanent resident spouse. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that denial of the waiver would result in extreme hardship to her husband. She maintains that, as a Cuban who deserted, her husband would be persecuted and discriminated against should he relocate to Cuba. Alternatively, the applicant maintains that her husband would experience extreme hardship due to their separation.

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 applicant is inadmissible based on her attempt to gain admission to the United States on January 24, 2002 using counterfeit documents. The applicant does not dispute this finding. The AAO therefore affirms the director's determination of inadmissibility. 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 applicant's lawful permanent resident spouse. Hardship to the applicant, or to her lawful permanent resident daughter, is not a relevant consideration under the statute.

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 37-year-old native of Cuba. He has resided in the United States since 2003. The couple met in 2004, and married in 2006. The applicant has a daughter from a previous relationship. The applicant's spouse maintains that he would face extreme hardship should he relocate to Cuba. In this regard, the applicant notes his inability to practice medicine in Cuba, the likelihood that he would be imprisoned, and the fact that he would be deprived of his ability to live in the United States. The applicant's spouse further claims that should the applicant be required to depart, their marriage would not survive. He also claims that he does not wish to be separated from his step-daughter, the applicant's daughter.

The AAO does not dispute that the applicant's spouse would likely face extreme hardship should he choose to relocate to Cuba. The applicant's spouse, however, is not required by statute to relocate to Cuba. There is no evidence in the record to establish that the applicant would experience extreme hardship should he remain in the United States. In this regard, the applicant's spouse only mentions the emotional impact of the family's separation. The AAO notes that a family's separation is an unfortunate, albeit expected, difficulty arising anytime a family member is removed from the United States. The record in this case, 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.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." 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 (9th 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 any evidence suggesting that the applicant's spouse is financially dependent on the applicant. Nor does the record include any evidence relating to the applicant's spouse's claimed medical condition (Post-Traumatic Stress Disorder) or the effect that the denial of the waiver would have on the applicant's spouse's health.

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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her lawful permanent resident 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.