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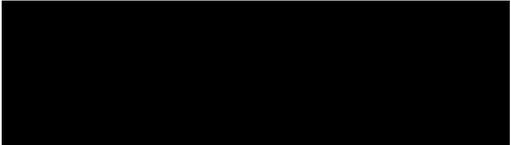
U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

SEP 09 2008

IN RE: Applicant:



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.

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, pursuant to the record, attempted to procure entry to the United States in June 1985 by presenting, to the port of entry officer, a photo-substituted Costa Rican passport. The applicant admitted in a sworn statement that she was not a national of Costa Rica and that the passport had been purchased. The applicant was thus 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 entry into the United States by fraud or willful misrepresentation. She seeks a waiver to remain in the United States with her lawful permanent resident spouse.<sup>1</sup>

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated April 13, 2006.

In support of this appeal, counsel for the applicant submits the following: a statement and translation from the applicant's spouse, dated May 4, 2006; medical documentation in regards to the applicant's spouse; and photographs of the applicant and her spouse. In addition, on July 7, 2008, the AAO received a letter from counsel containing additional medical documentation pertaining to the applicant's spouse. 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

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 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 Attorney General (Secretary) that the refusal of

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<sup>1</sup> Counsel has not provided any documentation that establishes that the applicant's spouse is a lawful permanent resident of the United States. The only indication that he is a lawful permanent resident is a notation on the Form I-601, which was completed by the applicant, stating that the applicant's spouse is a permanent resident. Nevertheless, the AAO will proceed with the instant appeal with the presumption that the Form I-601 is correct and that the applicant's spouse is a lawful permanent resident, and thus a qualifying relative for purposes of section 212(i) of the Act.

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...

*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. These factors include 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.

The applicant's spouse first asserts that he will suffer emotional and/or psychological hardship were the applicant removed from the United States. As the applicant's spouse states,

...my wife [the applicant] and I met on February 1992, and after dating for a few months we realized that we loved each other and such love will last forever; after so long, you can imagine what she represents to me. During all these years we have shared not only our love but our essential needs, the good and the bad, joy and sadness. She is an indispensable element in my life, so her absence will have a devastating effect in my existence....

*Letter and Translation from* [REDACTED] dated May 4, 2006.

There is no documentation establishing that the applicant's spouse's emotional and/or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding his mental state, such as statements from a professional in the medical field documenting that the applicant's spouse suffers and/or will suffer emotional and/or psychological hardship due to the applicant's removal. 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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does 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 are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not

necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed from the United States.

The applicant's spouse further states that he suffers from diabetes and needs his wife to remain in the United States. As he states,

...In the past years doctors diagnosed me Diabetes (type 2) and my health is being deteriorated, I am an [sic] Insulin and pills dependant due to diabetes, consequently I am losing my sight little by little, I am suffering neuropathy with some of my nerves seriously damaged, being frequently hospitalized and even I have been unconscious twice. My wife is the only person in charge of my insulin treatment, she constantly checks my blood sugar level and administers on time the drugs I need daily....

*Supra* at 1.

To begin, no objective documentation from a licensed medical professional has been provided that explains in detail the applicant's spouse's current medical condition, the gravity of the situation, its short and long-term treatment plan and what specific hardships he will face without the applicant's presence. The AAO notes that the applicant did provide copies of medical records; however, they do not detail, in layman's terms, the applicant's spouse's current medical situation and what impact said medical situation will have on him were the applicant residing abroad. Moreover, counsel has provided evidence that the applicant's spouse had a pulmonary embolism in April 2008; however, it appears that he was discharged without incident and the discharge summary provided by counsel contains no indication that without the applicant's presence, the applicant's spouse will suffer extreme hardship.

Finally, on the Form I-290B, Notice of Appeal (Form I-290B), counsel contends that the applicant plays an integral role in the applicant's spouse's survival, listing numerous tasks that only the applicant can perform for her spouse, such as "...cook all his [the applicant's spouse's] meals, shop for low sugar and low carbohydrate foods, administer insulin by injection twice a day and take his blood glucose levels three times a day..." See *Form I-290B*, dated April 27, 2006. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). As such, the AAO concludes that although the applicant's spouse may need to make alternate arrangements with respect to his own medical and emotional care were the applicant removed, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's spouse is unable to relocate to Cuba, his birth country, or any other country of their choosing, to accompany the applicant were she removed. The only hardship referenced is by counsel, who states that "... [the applicant's spouse] is a Cuban

refugee and would not move back to Cuba if [REDACTED] [the applicant] would be removed...” Counsel has not provided any evidence that the applicant’s spouse is Cuban and/or that he obtained refugee status in the United States. Moreover, no evidence of the basis for the applicant’s spouse’s procurement of refugee status has been provided. Thus, counsel has not established that the applicant’s spouse is unable to relocate to Cuba to reside with the applicant if the waiver application is denied. As referenced above, unsupported assertions of counsel do not constitute evidence.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her spouse would suffer extreme hardship if she were not permitted to remain in the United States, and moreover, the applicant has failed to show that her spouse would suffer extreme hardship were he to relocate abroad with the applicant based on her inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 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. The waiver application is denied.