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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 10 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Guyana who entered the United States on November 19, 1996 at New York, New York with fraudulent documentation. He 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 is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He 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 wife.

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 May 18, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) erred in determining that the applicant’s wife would not suffer extreme hardship if he is removed from the United States. Specifically, counsel states that CIS erred in determining that the applicant’s wife has a daughter who could support her if the applicant is removed and in concluding that the evidence did not establish that the applicant provided financial support to his wife. *See Brief in Support of Appeal* at 1. Counsel further states that the applicant’s wife is financially dependent solely on the applicant and suffers from various medical conditions that “prevent her from ever being self supporting.” *Brief* at 2. In support of the waiver application and appeal, counsel submitted an affidavit from the applicant’s wife, joint income tax returns filed by the applicant and his wife, a letter from the applicant’s step-daughter, and a letter from the applicant’s wife’s doctor. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

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 thirty-nine year-old native and citizen of Guyana who has resided in the United States since November 19, 1996, when he was admitted at New York City after presenting fraudulent documents. The applicant's wife is a fifty-five year-old native of Guyana and naturalized U.S. Citizen whom he married on January 9, 1997. They currently reside together in Richmond Hills, New York on the first floor of a home the applicant's wife owns together with her daughter, who also resides in the home with her husband and child.

Counsel asserts that the applicant's wife will suffer extreme hardship beyond the common results of deportation if the applicant is removed from the United States. Counsel states that the applicant's wife is financially dependent on the applicant, cannot support herself due to various medical conditions, and is not supported by her daughter, who resides in the same home. *See Brief* at 1-2. In support of these assertions counsel submitted an affidavit from the applicant's step-daughter that states that she and her husband do not support the applicant's wife and she is totally dependent on the applicant. *See affidavit of [REDACTED]* dated July 13, 2006. The applicant's step-daughter further states, "My husband and I own the house in which [REDACTED] and my mother live. . . . My mother pays \$1100.00 per month in rent to us to cover our mortgage expenses." *See affidavit of [REDACTED]*. Counsel also submitted joint income tax returns for the applicant and his wife to support the assertion that the applicant's wife is financially dependent solely on the applicant. The tax returns submitted by counsel do not, however, establish that the applicant's wife is financially dependent on the applicant. Their return for 2005 indicates that they earned \$17,100 in wages, salaries, and tips, but does not include any W-2 form to establish who earned that income. The tax returns for

2003 and 2004 both list business income as their sole source of income. In 2003, the applicant earned a net profit of \$5,835 as a construction worker and his wife earned a net profit of \$5,103 as a babysitter. *See Schedule C to 2003 Joint income tax return.* In 2004, the applicant earned \$5,247 and his wife earned \$3,761. *See Schedule C to 2004 Joint income tax return.* It does not appear that the applicant's wife is solely financially dependent on him, as she is earning her own income through her babysitting business.

Counsel further states that the applicant's wife "has been under medical treatment for a variety of ailments that prevent her from ever being self supporting." In support of this assertion, counsel submitted a letter from her doctor that states that the applicant's wife has been a patient since 1998 and has medical problems including Hyperlipidemia, osteoarthritis, and allergic rhinitis, and further states that she is recovering from bronchitis. *See undated letter from [REDACTED].* The letter lists the medications she is taking, including Zocor, Pepcid, Tylenol PM, and Claritin, but contains no further information about her medical condition. No other evidence was provided to describe the nature and severity of the medical conditions the applicant's wife suffers from, or to explain what treatment and medication is needed. The letter does not indicate that the applicant's wife is unable to work due to these conditions. 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. The evidence on the record does not support counsel's assertions that the applicant's wife suffers from a serious medical condition that prevents her from working in the United States and supporting herself.

Aside from the joint tax returns filed by the applicant and his wife, no further evidence was submitted documenting their income and expenses. The applicant's daughter states that she owns the home in which the applicant's wife resides and that the applicant's wife pays her a monthly rent of \$1100 to help cover the mortgage payment. No documentary evidence was submitted to support this assertion. Further, as noted by the service center director, public records indicate that the applicant's wife and her daughter purchased the home together, contrary to the statement made by the applicant's step-daughter. The evidence submitted is insufficient to support counsel's claim that loss of the applicant's income would result in hardship beyond that which would normally be expected as a result of deportation. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife states that she relies on the applicant both economically and emotionally and further states: "He makes things easy for me and is a great companion. Right now I am very happy. No one wants to be alone, especially as one gets older, and my husband is my security blanket." *Affidavit of [REDACTED]* dated January 8, 2004. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is available only 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 familial and emotional bonds exist.

The emotional and financial hardship the applicant's wife 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). The applicant made no claim that his wife would experience hardship if she were to relocate with him to Guyana. Therefore, the AAO cannot make a determination of whether she would suffer extreme hardship if she moved to Guyana.

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.

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.