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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: ST. PAUL, MN

Date:

APR 01 2009

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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grisson, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, St. Paul, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen 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 her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 19, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. Form I-290B.

In support of the waiver, counsel submits two briefs. The record also includes, but is not limited to, statements from the applicant; statements from the applicant's spouse; medical records for the applicant's spouse; a statement from the applicant's minister; published reports on muscular dystrophy and the Canadian healthcare system; a non-profit certificate, articles of incorporation, and a tax statement for the [REDACTED] a summary plan description for the Association of [REDACTED] and a Canadian police clearance letter for the applicant. 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.

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.

The record reflects that in September 2002 the applicant, a Canadian citizen, was admitted to the United States upon telling Customs and Border Patrol agents that she was coming to visit her aunt. *Attorney's brief*, dated October 17, 2006. She did not disclose that she was also planning to marry her current spouse, a United States citizen. *Id.* She married her current spouse on September 29, 2002. *Marriage certificate*. According to counsel, the applicant entered the United States a second time in March 2003 and may have indicated that she was coming to visit. *Attorney's brief*, dated October 17, 2006. In February 2004, the applicant and her spouse went to visit Canada. *Id.* Upon their return, the applicant was placed in secondary inspection where she initially stated that the purpose of her entry was to visit her aunt and that she was not married. *Id.* Within a short time, she withdrew her statement and told the officials that she was married to her spouse. *Id.* She was refused entry and remained in Canada for 14 months until she was admitted to the United States on a K-3 visa on June 24, 2005. *Id.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel contends that the applicant timely retracted her misrepresentation at her 2004 attempted entry and is not inadmissible under Section 212(a)(6)(C). *Attorney's brief*, October 17, 2006. The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* The AAO finds that the applicant did not timely retract her misrepresentation, as her retraction occurred during secondary inspection, not during primary inspection, her first opportunity to retract her initial claim. Furthermore, the AAO also finds the applicant to have made a willful misrepresentation of a material fact when she was admitted to the United States in September 2002 as a visitor and did not disclose her intention to marry a United States citizen and reside in the United States. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).

*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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Canada or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Canada, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States and has no family in Canada. *Birth certificate; Statement from the applicant's spouse*, dated August 9, 2006. All of his immediate and extended family reside in South Dakota. *Id.* The applicant's spouse suffers from progressive Muscular Dystrophy. *Medical records, [REDACTED], [REDACTED], dated 1996 – 2000.* A few years ago, the applicant's spouse noticed a definite progression of his condition. *Statement from the applicant's spouse*, dated August 9, 2006. His coordination and muscular control have steadily declined. *Id.* Things that were no problem for him in the late 1990s and early 2000s are now very difficult for him to do on his own. *Id.* While the AAO acknowledges the claims of the applicant's spouse regarding his declining health, they are insufficient proof of his current medical status. The record does not include evidence from a licensed healthcare professional documenting the deterioration of the health of the applicant's spouse. The most recent documentation of his medical condition is from 2000 and states that he walks without help and gets up and down without assistance. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 applicant's spouse states that he resided in Canada while the applicant was awaiting her K-3 visa. *Statement from the applicant's spouse*, dated August 9, 2006. He notes that the months of living in Canada were extremely hard on him, particularly the winter. *Id.* Because of his mobility issues, it is very difficult for him to get around in the snow. *Id.* Additionally, with his coordination and mobility issues, slippery surfaces are a huge detriment for him. *Id.* While the AAO notes these statements, it again observes that the record does not document the problems that the applicant's spouse claims he faces in terms of mobility. *Matter of Soffici, supra.*

The applicant's spouse also expresses concern about the medical treatment he could receive in Canada, stating that he would be forced to travel great distances to obtain medical attention. *Statement from the applicant's spouse*, dated August 9, 2006. He further asserts that because of his medical condition, he may not be able to obtain landed immigrant status in Canada. *Id.* According to a published report submitted for the record, waiting for care has been and continues to be a major issue in the health care sector in Canada. "*Waiting times for specialized services (January to December 2005)*," <http://www.statcan.ca/english/freepub/82-575-XIE/82-575-XIE2006002.htm>. As in previous surveys, waiting too long for care was cited as the number one barrier among those who

experienced difficulties. *Id.* Among those who experienced difficulties accessing a specialist consultation, 68 percent indicated that waiting was the problem followed by 32 percent who indicated that they had difficulties getting an appointment. *Id.* Approximately 18 percent of individuals who visited a specialist indicated that waiting for the visit affected their life. *Id.* The AAO notes, however, that the survey reports national healthcare statistics and does not address the availability of health care in Manitoba, the province where the record indicates that the applicant and her spouse would live. The AAO also notes that the record fails to provide any documentary evidence in support of the concerns raised by the applicant's spouse in relation to the effect his medical condition would have on his ability to obtain landed immigrant status in Canada. *See Matter of Soffici, supra.* When looking at the aforementioned factors, the AAO finds that the record includes insufficient evidence to establish that the applicant's spouse would experience extreme hardship if he were to reside in Canada.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse suffers from progressive Muscular Dystrophy and has been specifically diagnosed with Limb Girdle Dystrophy. *Medical records, [REDACTED] [REDACTED] dated 1996 – 2000; [REDACTED] [REDACTED] dated November 6, 1997.* His coordination and muscular control have steadily declined. *Statement from the applicant's spouse, dated August 9, 2006.* As previously discussed, the record does not contain documentary evidence that establishes the applicant's spouse's medical condition beyond 2000 and, therefore, fails to demonstrate the current state of his health. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 applicant's spouse notes that all of his family resides in his home state of South Dakota. *Statement from the applicant's spouse, dated August 9, 2006.* Counsel contends that even though the applicant's spouse's parents live near him, they are now older and are unable to provide the assistance he needs. *Attorney's brief, dated October 17, 2006.* He now relies upon the applicant for help in managing on a day-to-day basis. *Id.* While the AAO acknowledges counsel's assertions, it notes that, without documentation of the applicant's spouse's current health status, his claims are insufficient proof that the applicant's spouse's healthcare needs require the applicant's assistance on a daily basis. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).*

[REDACTED] is the Minister and President of [REDACTED], a Hutterite Colony located in South Dakota. *Statement from [REDACTED] dated August 9, 2006.* He has counseled the applicant's spouse regarding his marriage proposal in 2002 and has observed him and the applicant virtually every day. *Id.* He states that the applicant and her spouse are extremely devoted to each other and he believes that both would suffer severe emotional distress and depression should they ever be separated. *Id.* The AAO acknowledges [REDACTED] belief that separation from the applicant would result in severe emotional distress and depression on the part of the applicant's spouse. However, it does not find the record to establish the authority of [REDACTED]

██████████ to evaluate the mental health of the applicant's spouse and the record provides no documentation of the applicant's mental health by a licensed healthcare professional to support ██████████ conclusions.

United States courts have repeatedly 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, *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 deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find the record to demonstrate that the applicant's spouse would suffer extreme hardship if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely 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.