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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: BALTIMORE, MD Date: FEB 05 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. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 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 naturalized 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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 22, 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 her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a mortgage deed; tax statements for the applicant and her spouse; an employment letter for the applicant; a psychological evaluation of the applicant; a police clearance letter for the applicant; bank statements; a car insurance policy; retirement investment statements; medical records for the applicant; a health insurance plan for the applicant; earnings statements for the applicant; a statement from the applicant's church; statements from the applicant's spouse; published country conditions reports; and a medical statement for the applicant's child. 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 on November 8, 1993 the applicant attempted to procure admission into the United States at Miami International Airport by presenting a false passport. *Record of Sworn Statement*, dated November 8, 1993. The applicant filed for asylum which was denied by the Immigration Judge. *Order of the Immigration Judge*, dated August 16, 1995. Her subsequent appeal of the immigration judge's decision was dismissed by the Board of Immigration Appeals. *Decision of the Board of Immigration Appeals*, dated July 10, 1997. The applicant did not depart the United States. *Form I-485, Application to Register Permanent Residence or Adjust Status*. Based on her presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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 or her children would experience if her waiver request is denied is not directly relevant to the determination as to whether she 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 Haiti 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 Haiti, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Haiti. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. Both of his parents reside in Haiti. *Id.* The record is unclear as to how long the applicant's spouse has resided in the United States and whether he has additional family members in Haiti. The AAO notes that the record documents the applicant's spouse as having a residence in the United States as of 1990. *Form G-325A, Biographic*

Information sheet, for the applicant's spouse. Counsel notes that if the family were to relocate, they would suffer severe economic consequences as a result of Haiti's unemployment and poverty. *Attorney's brief.* Country conditions reports document the economic deprivation and wide disparity in wealth within Haiti. *"Haiti's Health Indicators Reflect Its Political and Economic Pains," by* *Population Reference Bureau*, dated January 2004. The AAO acknowledges the country conditions information provided by the record, but observes that its generalized nature fails to support a finding that the applicant, who is an experienced geriatric nurse, would be unable to find employment in Haiti and support her family.

Counsel contends that one of the applicant's daughters suffers from a serious medical condition related to her high cholesterol. *Attorney's brief.* He asserts that her condition must be monitored closely and that Haiti lacks the medical facilities necessary to control her severe cholesterol problem. *Id.* Counsel states that the lack of medical care would cause physical and emotional pain to both the applicant and her spouse, who would suffer upon seeing his daughter not have adequate care. *Id.* The record, however, does not support counsel's claims. The AAO notes that the record includes a statement from a licensed health professional that indicates only that the applicant's eight-year-old daughter suffers from high cholesterol, that she must be careful about what she eats and that a follow-up test will be performed. *Statement from* , dated February 10, 2006. Moreover, although the record includes published reports documenting the dismal public health situation in Haiti (*see Health in Haiti, http://www.intlchildcare.org/haiti_health.html*), these reports fail to indicate that Haiti has no medical facilities capable of providing adequate care to the applicant's daughter should she require it. The AAO also notes that the record fails to provide documentary evidence, e.g., an evaluation provided by a licensed health professional, in support of counsel's assertion that the applicant's spouse, the only qualifying relative in this proceeding, would suffer emotional hardship as a result of his daughter's relocation to Haiti. 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).

Counsel also asserts that Haiti is known for its lawlessness and that it is well known that Haitian bandits and thugs kidnap people for ransom on a regular basis. *Attorney's brief.* He contends that it is especially common for such individuals to target foreigners. *Id.* The AAO notes that, as of April 30, 2008, the Department of State has issued a travel warning advising U.S. citizens against travel to Haiti. *Department of State Travel Warning, dated April 30, 2008.* In light of this warning and the applicant's long residence in the United States, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Haiti.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the record demonstrates that the applicant's spouse has lived in the United States since at least 1990. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not address what family members the applicant's spouse may have in the United States. A psychological evaluation of the applicant notes that the applicant has suffered severe depression in the past to the point where she needed family support.

Psychological evaluation by dated June 6, 2005. After the applicant's father passed away, the applicant's grieving process was further complicated by her endogenous depression which required extensive care and treatment. *Id.* According to her therapist, it would present a significant risk to the applicant if she or her spouse were to be removed and she again lapse into a severe depression requiring inpatient care because often times, each depressive episode can become more severe than the previous requiring more hospital time, more therapy, and more medication. *Id.* While the AAO acknowledges these statements made by a licensed health professional, it notes that in an earlier portion of the psychological evaluation, notes that the applicant has no prior psychological or psychiatric counseling history and that she has not received any type of psychiatric care, not inpatient, partial, nor outpatient care. *Id.* As a child, she was very much saddened by her father's death, but her medical history is unremarkable and she reports to be in good health. *Id.* She denies suffering through any type of significant trauma or abuse in her life. *Id.* She also states that she is in good spirits most of the time. *Id.* The AAO notes that the psychological evaluation offers conflicting information regarding the applicant's history of depression and whether she has ever received treatment. Furthermore, the psychological evaluation analyzes the applicant, not her spouse who is the only qualifying relative for purposes of this proceeding. While the evaluator reaches the conclusion that the applicant's spouse and children are dependent upon the applicant emotionally, financially, physically, and spiritually, no basis is provided for this conclusion as the psychological evaluation was conducted of the applicant. As such, the psychological evaluation will be given little evidentiary weight.

The applicant's spouse states that, in the applicant's absence, he would be unable to care for his children and would have to turn them over to Child Protective Services. *Statement from the applicant's spouse*, dated January 12, 2009. Counsel states that the applicant is the economic backbone of her family and that, without her, they would suffer extreme economic hardship even if they remained in the United States. *Attorney's brief.* The AAO observes, however, that the documentation submitted into the record conflicts with counsel's assertions concerning the family's economic dependence on the applicant. The record includes a 2004 joint tax return for the applicant and her spouse showing income in the amount of $61,414.00. *U.S. Individual Income Tax Return Form 1040 for 2004.* The applicant's earnings statements document that she earned a bi-weekly gross salary of $853.18 in 2003 and $968.48 in 2004. *See earnings statements for the applicant.* Thus, the applicant earned approximately $22,182.68 annually in 2003 and $25,180.48 annually in 2004. When comparing these figures with the $61,414.00 income reported on the tax return, the AAO notes that the applicant's spouse earned more than the applicant. Accordingly, the record fails to establish that the applicant's spouse would suffer extreme economic hardship upon the applicant's removal.

The applicant's spouse also contends that it is "inhuman" to make him worry about the applicant on a daily basis. *Statement from the applicant's spouse, dated January 12, 2009.* He asserts that he would worry about the applicant's safety if she returned to Haiti and that his daughters would unable to visit her safely. *Id.* He further asserts that the applicant and his daughters would be kidnapping targets and that he would be unable to ransom them and that nothing would then stop the kidnappers from doing whatever they wanted. *Id.* The AAO notes that the applicant and her daughters are not qualifying relatives for the purposes of this proceeding. Therefore, although it acknowledges the

applicant's spouse's statements regarding his concerns over the safety of the applicant in Haiti, the AAO finds the record to lack the documentation necessary, e.g., an evaluation by a licensed health care professional, to establish that the concerns stated by the applicant's spouse would cause him to suffer extreme emotional hardship if the applicant is removed to Haiti and he remains in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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 dated the applicant for over one year prior to marriage and he hopes that they will be married forever. *Statement from the applicant's spouse*, dated December 27, 1998. He asserts that if the applicant is sent back to Haiti, his life would be unbearable. *Statement from the applicant's spouse*, dated January 12, 2009. The AAO acknowledges the emotions of the applicant's spouse. However, U.S. court decisions 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 hardship experienced by the families of most aliens being removed. 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 that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the applicant has failed to establish extreme hardship to her spouse if he remains in the United States following her removal, she is not eligible for a waiver under section 212(i) of the Act. 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.