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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: MEXICO CITY (PANAMA CITY)

DATE: JAN 06 2009

IN RE:

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.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Guyana. He was found to be 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), for seeking to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), for admission to the United States to join his U.S. citizen mother, [REDACTED].

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his U.S. citizen mother, and that the waiver merits a favorable exercise of discretion. The District Director denied the Application for Waiver of Ground of Excludability (now referred to as Inadmissibility) accordingly.

On appeal, counsel for the applicant submits a brief, dated October 19, 2006, and supporting documentation. See *Brief In Support of the Appeal*. The entire record was reviewed and considered in rendering this 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.

Regarding the applicant's ground of inadmissibility, the record reflects that on September 24, 1989, the applicant arrived in New York City, New York from Port of Spain, Trinidad. The applicant was in possession of a pre-stamped U.S. Customs declaration card, a Guyanese passport containing a counterfeit U.S. Immigration and Naturalization Service admission stamp and a counterfeit U.S. Immigration and Naturalization Service temporary I-551 "ADIT" Stamp denoting lawful permanent residence status. The applicant indicated in his signed sworn statement that he paid \$10,000 in Guyanese dollars to an individual in Trinidad to obtain the counterfeit stamps. The Immigration and Naturalization Service inspection officer at New York City's John F. Kennedy airport determined that the applicant was excludable based on his attempt to enter the United States with counterfeit stamps. The applicant's sworn statement shows that he requested to withdraw his application for admission and return to Guyana in lieu of appearing before an Immigration Judge for a hearing in exclusion proceedings. The applicant's attempt to procure admission to the United States by fraud renders him inadmissible under section 212(a)(6)(C)(i) of the Act.

In January 2005, the applicant submitted an Application for Immigrant Visa and Alien Registration (Form DS-230 Parts I & II) to the U.S. Embassy in Georgetown, Guyana, based on an approved Form

I-130 filed by his mother, a naturalized U.S. Citizen. Form DS-230 Part II, item 30, in part, requests the applicant to state whether he is an alien “who seeks or has sought a visa, entry into the United States, or any immigration benefit by fraud or misrepresentation.” The applicant responded “No” to this item. The applicant also responded “No” to item 32 of Form DS-230 Part II, which requests him to state whether he has ever been refused admission to the United States at a port-of-entry. The record reflects that during the applicant’s February 1, 2005 immigrant visa interview, he swore to this application, with the above misrepresentations, under oath before a consular officer stating that all of the statements that appear in his application had been made by him and they are all true and complete to the best of his knowledge and belief. The record further reflects that during the applicant’s interview he orally testified that he had never attempted to enter the United States. When the applicant was confronted with the U.S. Consulate’s record regarding his prior attempt to enter the United States, he then admitted that he had purchased a United States visa for \$8,500 and attempted to enter the United States.

The applicant’s failure to disclose to the consular officer his prior attempt to enter the United States with fraudulent documents is a willful misrepresentation of a material fact. The applicant misrepresented this fact to procure admission to the United States, rendering him inadmissible under section 212(a)(6)(C)(i) of the Act for this additional basis.

On appeal, counsel asserts that the right of a defendant in criminal proceedings to effective assistance of counsel flows from the sixth amendment. Counsel states that the lack of assistance of counsel in administrative proceedings as lending itself to prejudice is also well-settled law. Counsel contends that at no time during any of the proceedings attendant to the applicant’s interview was he represented by counsel. Counsel maintains that the Service’s ability to illici [sic] and interpret testimony to the exclusion of the understanding of the applicant without the benefit of counsel are overreaching. Counsel contends that the applicant should be granted a remand for reexamination with counsel present.

The sixth amendment right to counsel, from which flows the right to “effective” counsel, is limited to criminal prosecutions and thus has no application in these proceedings. *Mantell v. INS*, 798 F.2d 124, 127 (5th Cir. 1986). The right to counsel as delineated in section 292 of the Act, 8 U.S.C. § 1362, is also limited to aliens who are in removal proceedings before an immigration judge and appeal proceedings before the Attorney General from any such removal proceedings. In the present case, the applicant was in a non-adversarial interview before the U.S. Consulate in Georgetown, Guyana.

Chapter 9, section 40.4, note 12.4 of the Foreign Affairs Manual provides:

Each post has the discretion to establish its own policies regarding the extent to which attorneys and other representatives may have physical access to the Consulate or attend visa interviews, taking into consideration such factors as a particular consulate’s physical layout and any space limitations or special security concerns. Whatever policies are set must be consistent and applied equally to all. For example,

either all attorneys at a particular post must be permitted to attend consular interviews or all attorneys must be prohibited from attending interviews.

Accordingly, there is no uniform practice or policy regarding the right to be represented by counsel during an interview for an immigrant visa; it is solely at the discretion of the post. Furthermore, when such an option is available to the applicant, he or she must take the initiative to exercise this option. Therefore, counsel's assertions regarding the consular officer's interview of the applicant without the presence of counsel, are without merit in these proceedings.

Counsel asserts that a preparer in Jamaica, New York, [REDACTED] completed the Form DS-230 on behalf of the applicant. Counsel contends that the applicant, relying solely on the representations of his mother and [REDACTED], signed the documents. Counsel states that the applicant then sought counsel from a preparer of immigration documents in Guyana, [REDACTED]

Counsel maintains that [REDACTED] informed the applicant that he should not mention his illegal entry because it was removed after ten years and would not compromise the application.¹ Counsel states that during the applicant's interview at the U.S. Consulate, the applicant responded to the questions with the belief that his attempt to enter the United States was not a material fact since it was removed from the record. Counsel maintains that when the consular officer asked the applicant a specific question regarding his illegal entry, the applicant gave full and forthright information. Counsel contends that based on the applicant's rational understanding that the illegal entry was no longer a matter of record, and in reliance upon counsel of persons holding themselves out as professionals in immigration law, the applicant did not seek to withhold, conceal, or deny information to the consular officer.

The AAO finds counsel's assertions that the applicant blindly relied on the advice of unlicensed immigration preparers unpersuasive. According to chapter 9, section 40.63, note 4.5 of the Foreign Affairs Manual:

The fact that an alien pursues a visa application through an attorney or travel agent does not serve to insulate the alien from liability for misrepresentations made by such agents, if it is established that the alien was aware of the action being taken in furtherance of the application. This standard would apply, for example, where a travel agent executed a visa application on an alien's behalf. Similarly, an oral misrepresentation made on behalf of an alien at the port of entry by an aider or abettor of the alien's illegal entry will not shield the alien in question from inadmissibility under INA 212(a)(6)(C)(i) [section 212(a)(6)(C)(i) of the Act], irrespective of what penalties the aider or abettor might incur, if it can be established that the alien was aware at the time of the misrepresentation made on his or her behalf.

There is substantial evidence supporting the conclusion that the applicant's misrepresentation during his immigrant visa interview was willful. The applicant failed during his immigrant visa interview to

¹ Counsel refers to the application as an "adjustment application." However, the applicant is applying for admission to the United States with an immigrant visa; he is not applying for an adjustment of status.

be forthcoming regarding his prior attempt to enter the United States by fraud. The applicant's prior attempt to enter the United States by fraud was not innocent or unknowing. As stated, the applicant was denied admission to the United States on September 24, 1989. He issued a sworn statement before an inspection officer where he admitted to paying an individual located in Trinidad \$10,000 Guyanese dollars to obtain counterfeit stamps. The applicant's sworn statement shows that he requested to withdraw his application for admission and return to Guyana in lieu of appearing before an Immigration Judge for a hearing in exclusion proceedings. Accordingly, the applicant was aware of his prior action and should have stated this information during his immigrant visa interview. *See e.g. Mwongera v. INS*, 187 F.3d 323, 330 (3rd Cir. 1999)(Finding by Board of Immigration Appeals that alien made willful misrepresentation on application for business visitor visa by understating his prior stay in United States, as required for finding of fraud, was supported by substantial evidence.)

Moreover, even if the applicant was found not to have willfully misrepresented a material fact during his immigrant visa interview, he would still be found inadmissible for his September 24, 1989 attempt to procure admission into the United States using counterfeit (fraudulent) stamps. Therefore, the AAO affirms the District Director's finding that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides:

- (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.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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.

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).

United States courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The applicant is the son of [REDACTED], a naturalized U.S. Citizen. The applicant’s mother is a qualifying family member for section 212(i) of the Act extreme hardship purposes. Extreme hardship to the applicant’s mother must be established in the event that she accompanies the applicant to Guyana or in the event that she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

As evidence of extreme hardship counsel furnished a letter from the applicant’s mother, which in pertinent part provides:

I have five (5) children and all of all my children, [REDACTED] has all the patience and tolerance with people. My other four children who are residing in the U.S.A. and are US citizens/Permanent Residents have no time for me. Their lives have been very busy attending to themselves and their own families. There are times, I tired to tell myself that I have only one child and that child is Bhadenauth.

I am currently ill, suffering from abnormally high blood pressure and is on multiple medications. . . . Since [REDACTED] went into the American Embassy in February 2005 and did not get the immigrant visa, my health has deteriorated. I have since become very stressed out, forgetful, having sleepless nights, very nervous, lost concentration, feeling weak, having constant severe headaches, feeling a lot of dizziness, lost my appetite and having frequent uneasiness in my chest cavity. These adversities have elevated my blood pressure and have caused me to experience dizziness which subsequently made me collapsed three (3) times.

Knowing that [REDACTED] and his family are still in Guyana is giving me nightmares. Every time I think about [REDACTED] and his family, I get very sick in my stomach, scared and frightened for [REDACTED] and his family welfare because of what is going on in Guyana with the crime rate involving thieves, bandits, rapist, etc. I am having severe nightmares knowing that [REDACTED] and his family are still in Guyana.

I am currently residing with my son, [REDACTED] and his family. His life has been very busy. He has no time for me or my sickness. . . . By the time my daughter-in-law comes home in the evenings, she is all tired and stressed out from taking care of her three children. She also does not have any time for me. I have to deal with my sickness all by myself and most of the times, I cried all by myself. I am becoming to feel lonely and neglected.

Whenever I go to Guyana, [REDACTED] and his family are there for me and treated me well. It is very hard for me to continue to be away from him and his family. [REDACTED] is more than a son to me. Of all my children, [REDACTED] is the best. Again, my other children are busy with their own lives and their families do not have any time for me in the U.S.A. They do not have the patience and tolerance to deal with people.

I am praying, hoping and cannot wait for [REDACTED] and his family to migrate to the U.S.A. so that I can go and reside with them and feel welcome at home. I will also have people around me who will be there to take care of me when I am not well, support me emotionally, mentally, and financially.

Counsel furnished the following documentation as evidence of the applicant's mother's medical condition: A letter from [REDACTED], Jamaica Hospital Medical Center, dated September 18, 2006, which provides that the applicant's mother has been diagnosed with low back pain, high cholesterol, high blood pressure and dizziness, and has been under his care since 2004; Rite Aid pharmacy receipt print-outs for the applicant's prescriptions of Meclizine (used to prevent and treat nausea, vomiting, and dizziness caused by motion sickness)², Captopril (used to treat high blood pressure and heart failure)³ and Zetia (used together with lifestyle changes (diet, weight-loss, exercise) to reduce the amount of cholesterol and other fatty substances in the blood)⁴; A letter from [REDACTED], dated November 28, 2005, reiterating the applicant's mother's condition and stating that her condition may be worsened by stressful situations; and a medical report from the Jamaica Hospital Medical Center indicating that the applicant's mother had a lumbar spine X-ray on November 4, 2005.

Although counsel has furnished documentation of the applicant's mother's medical conditions, there is no indication that she would not be able to receive proper medical treatment in Guyana if she were to

² U.S. National Library of Medicine and the National Institutes of Health, Medline Plus, <http://www.nlm.nih.gov/medlineplus/medlineplus.html>.

³ *Id.*

⁴ *Id.*

relocate there due to the applicant's inadmissibility. Counsel has not furnished any country condition reports to establish the standard of medical care and availability of medical treatment in Guyana. 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)). Accordingly, the applicant has not established that his mother would suffer extreme hardship if she were to relocate to Guyana due to his inadmissibility.

In addition, the applicant has not established that his mother would suffer extreme hardship if she remained in the United States without him. The applicant's mother indicates that she worries about the high rate of crime in Guyana. As she states in her letter, "Every time I think about [REDACTED] and his family, I get very sick in my stomach, scared and frightened for Bhadenauth and his family welfare because of what is going on in Guyana with the crime rate involving thieves, bandits, rapist, etc. I am having severe nightmares knowing that [REDACTED] and his family are still in Guyana."⁵ However, counsel has not provided any country condition reports to corroborate these assertions. Furthermore, the letter from the applicant's mother does not provide any evidence of how the applicant and his family are affected by the purported high rate of crime in Guyana. It does not indicate whether they live in a high crime area of Guyana, and whether they have the means necessary to create a safe environment. Moreover, there is no documentation in the record showing that the applicant's mother has been evaluated by a licensed mental health professional. Such documentation would establish the severity and implications of the applicant's mother's anxiety, its connection to her separation from the applicant, and whether she is in need of a treatment plan. As stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The applicant's mother acknowledges that her son, [REDACTED], is providing for her financially. There is no indication that she is indigent or is not receiving proper medical treatment due to the applicant's absence from the United States. Additionally, during the applicant's immigrant visa interview he testified that his mother, brothers and sister who are in the United States will assist to provide free room and board and will be responsible for his and his family's financial expenses until he and his wife can find employment. This testimony indicates that the applicant's siblings are willing to provide financial assistance to their family members, including the applicant's mother. Therefore, at issue is the emotional hardship the applicant's mother will suffer if the applicant is denied admission to the United States. The applicant's mother states that the son she is currently residing with has no time for her. She contends that if the applicant were admitted to the United States, he and his family would offer her needed emotional support.

While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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 thus the familial and emotional bonds,

⁵ Although hardship to the applicant is not relevant for the purpose of establishing eligibility for a waiver under section 212(i) of the Act, it will be considered insofar as it results in hardship to the qualifying relative.

exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. 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), *Perez v. INS*, 96 F.3d 390 (9th 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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). 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 record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s mother, Arawattie Somrah, would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant’s mother will suffer emotionally as a result of separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. United States court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

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 failed to establish extreme hardship to his U.S. citizen parent as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests 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.