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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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FILE:

Office: MIAMI, FLORIDA

Date: JUL 01 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 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 "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida. The matter has now been certified for review to the Administrative Appeals Office (AAO). The decision of the District Director will be withdrawn and the application approved.

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 sought admission to the United States by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant 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 had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated April 3, 2009.

Counsel for the applicant asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in failing to properly analyze country conditions in Haiti and states that dangerous conditions and economic devastation would result in extreme hardship to the applicant’s wife if she relocated there or remained in the United States without the applicant. *See Counsel’s Supplemental Brief in Support of Application for Ground of Inadmissibility.* In support of the waiver application, counsel submitted numerous documents concerning economic and social conditions in Haiti and describing damage occurring as a result of a series of hurricanes and tropical storms in 2008. The record also contains a statement from the applicant’s wife. The entire record was reviewed and considered in arriving at a decision.

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. *Id.* at 566. The BIA has further stated:

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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the 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). 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).

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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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 Haiti who has resided in the United States since May 24, 1999, when he attempted to enter using a fraudulent Haitian passport under the name [REDACTED]. The applicant's wife is a forty-nine year-old native of Haiti and citizen of the United States who has resided in the United States since 1991. The applicant and his wife live in Miami, Florida.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Haiti with the applicant because of conditions there, including "abject poverty, utter destruction, and mass starvation." *See Counsel's Supplemental Brief in Support of Application for Ground of Inadmissibility* at 1. Counsel cites a Travel Warning issued by the U.S. Department of State and further states that the applicant's wife would be subject to sequestration if she traveled to Haiti. *See Supplemental Brief* at 1,3. The Travel Warning, which was recently issued by the Bureau of Consular Affairs, states,

The State Department warns U.S. citizens of the risks of travel to Haiti and recommends deferring non-essential travel until further notice. . . . Travelers are strongly advised to thoroughly consider the risks before traveling to Haiti and to take adequate precautions to ensure their safety if traveling to Haiti.

....

In late August and September 2008, heavy rains and gale-force winds from hurricanes Fay, Gustav, Hanna, and Ike pelted the country's coastline and interior causing heavy flooding and mudslides. In the aftermath of the storms, eight of the country's nine departments reported significant physical and economic devastation. The storm damage came on the heels of the civil unrest in April 2008. . . .

U.S. citizens traveling to and residing in Haiti despite this warning are reminded that there also is a chronic danger of violent crime, especially kidnappings. . . . As of January 2009, 25 Americans were reported kidnapped in 2008. Most of the Americans were abducted in Port-au-Prince. Some kidnap victims have been killed, shot, sexually assaulted, or brutally abused. The lack of civil protections in Haiti, as well as the limited capability of local law enforcement to resolve kidnapping cases, further compounds the element of danger surrounding this trend.

Travel is always hazardous within Port-au-Prince. U.S. Embassy personnel are under an Embassy-imposed curfew. . . . The Embassy restricts travel by its staff to some areas outside of Port-au-Prince because of the prevailing road and security conditions. *U.S. Department of States, Travel Warning – Haiti, January 28, 2009.*

In light of conditions in Haiti as documented by the news articles, reports, and other evidence submitted by counsel, the AAO finds that the applicant's wife, who has resided in the United States since 1991 and has been a U.S. Citizen since September 1998, would suffer extreme hardship if she relocated to Haiti. The conditions there, including destruction caused by hurricanes in 2008, extremely poor economic conditions, and a high level of violent crime and kidnappings of U.S.

Citizens, are the basis for a warning by the U.S. State Department for U.S. Citizens not to travel to Haiti, and are sufficient to support a finding of extreme hardship to the applicant's wife in Haiti.

Counsel asserts that the applicant's wife would suffer extreme hardship if the applicant were removed to Haiti and she remained in the United States. Counsel states that the applicant's wife would have to support him financially because he would be unable to find employment in Haiti and further claims that the applicant would be unable to take on this financial burden because she already supports her child in Haiti, who is mentally challenged and blind. *Supplemental Brief* at 4. No evidence was submitted to support the assertion that the applicant has a child in Haiti whom she supports and who is blind or mentally challenged. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). However, the documentation submitted concerning the economic conditions in Haiti is sufficient to establish that the applicant would likely be unable to find employment or support himself in Haiti.

The record also contains a letter from the applicant's wife, which states,

My husband helped me so much around the house. I bought a house, many repairs were needed. . . . He helped me emotionally, by loving me. I have one child and the child is mentally challenged. It is hard for me to deal with that reality. But, [REDACTED] helps me cope with that. *See undated letter from [REDACTED]*

The applicant's wife further states that she does not know what she would do if he were deported to Haiti, she would be worried about his safety, and his life would be in danger there. *Id.* In light of dangerous conditions in Haiti, the applicant's wife's fears for his safety combined with the emotional hardship resulting from their separation would result in hardship more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. This finding is based largely on documentation of current conditions in Haiti, including economic devastation and a high rate of violent crime, which would cause the applicant's wife to fear his life is in danger there and result in emotional harm beyond the common results of removal or inadmissibility.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the

existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's immigration violation, attempting to enter the United States with a fraudulent passport.

The favorable factors in the present case are the hardship to the applicant's wife, the applicant's lack of a criminal record or additional immigration violations, his ten years of residence in the United States, and past employment history.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the decision of the district director will be withdrawn.

ORDER: The decision is withdrawn and the application approved.