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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 07 2009

IN RE: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) were denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, but the previous decisions of the Director and the AAO will be affirmed.

The applicant is a native and citizen of Haiti who 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 having attempted to procure admission into the United States by fraud or willful misrepresentation on December 30, 1993. The applicant was also found inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for being ordered excluded from the United States on October 27, 1994. The record indicates that the applicant is married to a United States citizen and has a U.S. citizen daughter. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his United States citizen spouse and daughter.

The Director concluded that the applicant was ineligible to apply for a waiver because his marriage to a United States citizen occurred after he was ordered excluded. *Director's Decision on the Form I-601*, dated December 6, 2004. The Director denied the applicant's Form I-212 based on the previous denial of the applicant's waiver application as no purpose would be served in approving his Form I-212 if he is inadmissible under section 212(a)(6)(C)(i) of the Act. *Director's Decision on the Form I-212*, dated December 6, 2004.

On appeal, the AAO found that the Director erred in finding the applicant not eligible to apply for a waiver of inadmissibility because his marriage to a United States citizen took place after he was ordered excluded. *Decision of the AAO*, dated August 8, 2006. The AAO noted that the timing of an applicant's marriage does not preclude him or her from being eligible to apply for a waiver of inadmissibility. The AAO then dismissed the applicant's appeal finding that the applicant failed to establish that his U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility. The AAO also dismissed the applicant's Form I-212, because no purpose would have been served reviewing the decision as the applicant continued to be inadmissible under section 212(a)(6)(C)(i) of the Act. *Id.*

In a motion to reopen and reconsider the AAO's decision, the applicant, through counsel, states that if the applicant's family relocates to Haiti, they will suffer extreme hardship. *Motion to Reconsider and Reopen*, filed August 21, 2006. Counsel also submits country reports and newspaper articles "detail[ing] the catastrophic human rights and living conditions in Haiti," and a more current statement from the applicant. *Id.*

The AAO notes that in situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d)

of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose." Thus, the AAO will first review the applicant's Form I-601.

The record indicates that the applicant attempted to procure admission to the United States on December 30, 1993 by presenting the temporary lawful resident card and passport of a [REDACTED],

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or his child experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 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 U.S. 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). 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Haiti and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

As stated above, with the motion to reopen and reconsider, counsel submits a statement from the applicant, the 2005 U.S. Department of State Country Report on Haiti, the 2005 Human Rights Watch Overview of Human Rights in Haiti, and the 2005 Amnesty International Report for Haiti.

The applicant states that his spouse will suffer extreme hardship as a result of relocating because Haiti is not stable due to political conflicts, violence, kidnappings, and poverty. *Applicant's Statement*, dated October 31, 2006. The applicant describes Haiti as a country with no sanitation infrastructure, running water, or electricity, where there are not enough hospitals and physicians to combat disease and there is no protection from police. He also states that violence is everywhere in Haiti and women are routinely raped. *Id.* In support of these assertions the applicant submits three human rights reports for Haiti.

The human rights reports submitted portray Haiti as a country suffering from widespread violence and crime with no significant governmental protections. The 2005 U.S. Department of State Country Report on Human Rights Practices for Haiti states that arbitrary and unlawful deprivation of life perpetrated by state agents and members of illegally armed groups continued throughout 2005 with no investigations into the killings. *2005 U.S. Department of State Country Report on Human Rights Practices for Haiti*, dated March 8, 2006. The report also states that there were widespread kidnappings by armed criminal elements of citizens from all social strata throughout the year and some victims were tortured and killed while in the kidnapper's custody. The report states that common criminality and armed attacks against civilians continued to create fear and panic among the population. *Id.* The 2005 Amnesty International Report for Haiti states that 2005 was marked by instability and violence with all sectors of society being targeted. *Amnesty International Report*, printed August 17, 2006. The report asserts that in addition to unarmed civilian men, women and children being killed and injured as a result of clashes between the Haitian National Police and the United Nations Stabilization Mission in Haiti, unlawful killings, rape, extortion, and arson were

frequent in impoverished neighborhoods controlled by armed gangs. *Id.* The Human Rights Watch Report for Haiti states that waves of violence engulf the country, especially in Port au Prince, where clashes between rival gangs result daily in civilian deaths. *Human Rights Watch Report*, printed August 17, 2006. The report states that because Haiti's government institutions are largely dysfunctional and its security forces are woefully inadequate, abuses go unpunished and violent crime rates soar. The report also states that police lawlessness is a major contributor to the overall insecurity and that Haiti's justice system is hardly functional. *Id.*

The State Department report and the Amnesty International Report also described abuses against women as being commonplace and on the increase in 2005. The 2005 U.S. Department of State Country Report on Human Rights Practices for Haiti states that women's organizations reported that local armed thugs frequently raped and harassed girls and women in the neighborhoods of Port au Prince known as Cite de Soleil and Martissant. *2005 U.S. Department of State Country Report on Human Rights Practices for Haiti*, dated March 8, 2006. The report states that police rarely arrested the perpetrators or investigated the incidents and the victims sometimes suffered further harassment and retaliation. *Id.*

The AAO notes that the current U.S. Department of State Country Report reflects similar country conditions in Haiti, stating that organized criminal gangs were responsible for the arbitrary and unlawful deprivation of life. *2008 U.S. Department of State Country Report for Haiti*, dated February 25, 2009. The current report also states that rape is underreported and commonplace with reports from credible non-governmental organizations and government sources stating that urban gangs used rape as a systematic instrument of intimidation. *Id.* In addition, the U.S. Department of State, Bureau of Consular Affairs has issued a current travel warning for people traveling to Haiti recommending all non-essential travel be deferred. The travel warning states that the 2008 hurricane season, which came on the heels of civil unrest, has caused significant physical and economic devastation throughout the country. *Travel Warning*, dated January 28, 2009. The warning states that it should serve as a reminder to travelers to Haiti of the chronic danger of violent crime, especially kidnappings, where the kidnappers make no distinctions of nationality, race, gender, or age. The travel warning states that the lack of civil protection in Haiti, as well as the limited capability of local law enforcement to resolve kidnappings cases, further compounds the element of danger surrounding this criminal trend. Finally, the warning states that travel within Port au Prince is always hazardous and that Embassy personnel are on an Embassy-imposed curfew, with some areas off limits to Embassy staff after dark. *Id.*

The AAO finds that due to the widespread violence and lawlessness in Haiti, particularly violence against women, coupled with the lack of any governmental protections and poor economic conditions, the applicant has shown that his U.S. citizen spouse will suffer extreme hardship if she relocates to Haiti.

However, the record does not include supporting documentation to find that the applicant's spouse will suffer extreme hardship as a result of being separated from the applicant. The applicant states that the current economic crisis in Haiti has left many citizens unemployed and that he will not be

able to send financial support to his family in the United States while living in Haiti. *Applicant's Statement*, dated October 31, 2006. He states that his spouse cannot manage the financial responsibility of raising their daughter alone and that his absence will cause his daughter emotional distress. *Id.* In her motion to reopen and reconsider, counsel states that the applicant's spouse will suffer emotional and financial losses as well as suffering that will result from seeing her daughter suffer. *Counsel's Motion*, dated August 21, 2006. The AAO notes that 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)). In addition, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). The current record includes no documentation regarding the finances of the applicant and his spouse and the applicant's spouse's ability to earn an income to support the family in the absence of the applicant. The record also lacks documentation, beyond assertions made by counsel, regarding the effects of separation on the applicant's spouse, the suffering this separation may cause their daughter, and how the suffering of the applicant's daughter will affect the applicant's spouse.

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 inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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.

Furthermore, the AAO finds that no purpose would be served in reviewing the applicant's Form I-212, as he continues to be inadmissible under Section 212(a)(6)(C) 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The previous decision of the AAO is affirmed.