identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 30 2009

IN RE: Applicant: [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).

Ellen C. Goleman

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Guyana, 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 an immigration benefit by fraud and/or willful misrepresentation. Specifically, in October 1993, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), claiming eligibility for an immigrant visa based on marriage to a U.S. citizen. A fraudulent marriage certificate was submitted with the the underlying Form I-130, Petition for Alien Relative (Form I-130). Both the Form I-130 and Form I-485 were ultimately denied, in August 1994, for failure to appear at the I-130/I-485 interview. It was later determined that the applicant had never been married to the individual who petitioned for the applicant on the Form I-130, and who was referenced as the applicant's spouse in the Form I-485 application.[1]

---

[1] The record indicates that the applicant has previously asserted that she did not intend to defraud the government and that the applicant was unaware that an application for permanent residency based on marriage to a U.S. citizen had been filed on her behalf. As stated by the applicant:

> prepared an I.N.S. application for me to sign and gave it to me quickly without letting me read it and never told me it involved a marriage case. It was around November 1993....
>
> I now understand how stupid I was for believing in [redacted] and thought he was a law abiding individual. I in no way wanted to lie or participate in a fraud. I truly regret what I did and know now that it was wrong....

Affidavit of [redacted], dated January 22, 2002.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

(1) There has been a misrepresentation made by the applicant;
(2) The misrepresentation was willfully made; and
(3) The fact misrepresented is material; or
(4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated February 22, 2007.

In support of the appeal, counsel submits a brief, dated March 7, 2007, and a letter terminating the applicant's spouse's employment, dated February 28, 2007. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 immigrant 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 a 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. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse, a lawful permanent resident, is the only

---

I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo,* 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud and/or misrepresentation. As the record indicates, the applicant signed her name, under penalty of perjury, on numerous forms, including the Form I-485 and the Form 325A, Biographic Information, that contained fraudulent information. Moreover, documentation was presented, specifically, a marriage certificate, that was blatantly false. The applicant had the duty and the responsibility to review the forms and the compiled documentation prior to submission. As such, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

qualifying relative, and hardship to the applicant, their children and/or their grandchildren cannot be considered, except as it may affect the applicant's spouse.

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 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.

The applicant's lawful permanent resident spouse contends that he will suffer extreme hardship if his spouse is unable to reside in the United States. He asserts that he will suffer emotional hardship due to the long and close relationship he has with his spouse. In addition, he notes that he will suffer financial hardship as the applicant is employed full-time and helps pay the mortgage and bills and without her presence in the United States, the applicant's spouse will be unable to afford the mortgage and his house will be foreclosed. *Affidavit of* [redacted] dated November 29, 2006.

It has not been established that the applicant's spouse will experience extreme emotional hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. Moreover, the record establishes that the applicant's spouse has a support network in the United States including children, grandchildren and siblings; it has not been established that they would be unable to assist the applicant's spouse should the need arise. Finally, it has not been established that the applicant's spouse, a native of Guyana, would be unable to visit his spouse. 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)).

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. 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 exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

As for the financial hardship referenced by the applicant's spouse, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant's and her spouse's financial situation, including income and expenses, assets and liabilities. The applicant has thus failed to show that her physical absence will cause her spouse extreme financial hardship. Nor has the applicant established that she is unable to obtain employment abroad and assist her spouse financially, should the need arise. Moreover, although counsel has provided a letter from SP Color Labs, LLC, confirming that the applicant's spouse's employment was terminated in February 2007, it has not been established that he has been unable to obtain alternate, gainful employment. *Letter from* *SP Color Labs LLC,* dated February 28, 2007. As such, the AAO concludes that although the applicant's spouse may need to make alternate arrangements with respect to his own emotional and financial care were the applicant unable to reside in the United States, it has not been established that such arrangements would cause the applicant's spouse extreme hardship. The record fails to establish that the applicant's spouse's emotional and financial survival directly correlate to the applicant's spouse's physical presence in the United States.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse asserts that he would not be able to relocate to Guyana as he would not be able to find employment there. *Supra* at 1. Counsel further notes that Guyana is a poor country "where kidnapings [sic] are commonplace, and a great percentage of the population lives in poverty. Mr. [the applicant's spouse] would almost certainly not be able to find employment...as he no longer has ties to the country, and at 55 years of age does not possess a marketable skill.... He would not be able to provide financial support for his 20 years old son, and two grandchildren, and would be unable to afford a plane ticket to travel back to the US...." *Brief in Support of Appeal,* dated March 7, 2007. 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). As such, it has not been established that the applicant's spouse would experience extreme hardship were he to relocate to Guyana, his native country, to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful permanent resident spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. There is no documentation establishing that his emotional and/or financial hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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. The waiver application is denied.