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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

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 08 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti, the spouse of a U.S. citizen, and the mother of four U.S. citizen children. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and children and denied the application.

On appeal, the applicant's husband submitted additional evidence¹ and asserted that he would suffer extreme hardship if his wife were removed from the United States. He also asserted that some evidence previously provided had not been considered in issuing the decision of denial, and that he would send copies of that evidence and additional evidence within 30 days. No further submissions have been received.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

On her Form I-485, Application for Adjustment of Status, the applicant indicated that she entered the United States on a photo-switched passport. The director found her inadmissible based on that admission. On appeal, the applicant did not contest her inadmissibility for that misrepresentation of her identity. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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

¹ The record contains a duly executed Form G-28 recognizing counsel. The record does not indicate, however, that the applicant's counsel of record participated in the appeal. All representations will be considered and the decision in this matter will be furnished both to the applicant and to counsel of record.

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 permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 set forth a nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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 record contains a letter, dated June 30, 2006, from the applicant. In that letter she stated that she believes that a two-parent family is better able to raise children. She further stated that the family is very close, and that her removal would oblige the children to cook, to do the laundry, and to perform the other housekeeping tasks that she currently performs. She also stated, that her husband “would have a hard time financially and emotionally to continue with the children [sic] education.” The applicant did not otherwise address the hardship that her removal would cause to her husband.

The record contains a letter, dated February 19, 2007, from the applicant's husband. The applicant's husband stated that if the applicant is removed from the United States he would be obliged to accompany her to Haiti, which he left 20 years ago, where he has neither land nor a home, and where his children have never lived. He characterized Haiti as unstable and as having high unemployment. He stated that if he did not accompany his wife he would live the rest of his life with a psychological scar. He closed the letter by stating, "I strongly believe that my wife [sic] removal will create extreme hardship to me and my family."

In a statement she gave to an officer of the Immigration and Naturalization Service on February 15, 1996, the applicant stated that her mother then lived in Haiti. The applicant did not indicate whether she has other relatives in Haiti.

The record contains a copy of the joint 2000 Form 1040A, U.S. Individual Tax Return, of the applicant and her husband, showing that they declared total income of \$28,777 during that year. The record contains no indication of the provenance of that income.

The record does not contain the 2001 or 2002 tax returns or Form W-2, Wage and Tax Statements, of the applicant and her husband.

The record contains a copy of the joint 2003 Form 1040A, U.S. Individual Income Tax Return, of the applicant and her husband, showing that they declared total income of \$29,555 during that year. Attached W-2 forms show that the applicant earned \$12,037.32 of that amount, and the applicant's husband earned \$16,769.78. The provenance of the remaining \$746 was unemployment compensation.

The record contains a copy of a portion of the joint 2004 Form 1040, U.S. Individual Income Tax Return, of the applicant and her husband, showing that they declared total income of \$39,146 during that year. Attached W-2 forms show that the applicant earned \$17,074.78 of that amount. On the return, \$1,414 is characterized as Line 21, Other income, but the provided portion of the return does not further explain the source of that information. The provenance of the remaining \$20,684.22 is also unknown to the AAO.

The record contains a copy of the joint 2005 Form 1040, U.S. Individual Income Tax Return, of the applicant and her husband, showing that they declared total income of \$41,641 during that year. Attached W-2 forms show that the applicant earned \$20,493.72 of that amount from two employers, and that the applicant's husband earned the remaining \$21,146.68² of that amount.

The record contains a copy of the joint 2006 Form 1040, U.S. Individual Income Tax Return, of the applicant and her husband, showing that they declared total income of \$28,469 during that year. An attached W-2 form and an attached 1099 Miscellaneous Income form show that the applicant's husband earned \$22,140.98 of that amount in wages and non-employee compensation. The provenance of the remaining \$6,328.02 is unknown to the AAO.

² The AAO notes that rounding to an even dollar figure is a routine practice on tax returns.

The record contains a letter, dated March 15, 2000, from the owner of a clothes cleaning company in Orlando, Florida. That letter states that the applicant had then worked for two years for that company, but did not state how many hours per week she worked or for what hourly amount.

The record contains a letter, dated October 15, 2001, from [REDACTED] a registered mental health counselor intern, who stated that the applicant's presence is critical to her family's functioning well. She stated that the applicant is the "primary financial provider for the family" and is in charge of various household responsibilities including cooking and shopping. She noted that all four children expressed sadness at losing their mother, and that all expressed that they need their mother. She noted that one child was on her mother's lap during most of the session. She did not otherwise address the hardship that denying the waiver application would cause the applicant's husband. Whether the applicant's husband was present at that interview is unclear.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single interview with the applicant and her children. The record does not reflect an ongoing relationship with the applicant or any of her family members, or any history of treating the applicant or any member of her family. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established professional relationship, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

Further, the AAO notes that [REDACTED] did not explain her basis for the statement that the applicant is her family's primary financial provider, and further notes that the evidence in the record does not support that assertion. The financial evidence in the record shows that the applicant has substantially contributed to family income during some of the years for which evidence was provided, but the record contains no evidence that she ever contributed more than half of the family income, as Ms. [REDACTED] implied.

The record contains no evidence of the recurring monthly expenses of the applicant's family, and no indication, therefore, that the applicant's husband would be unable to sustain the family without the applicant's income. Clearly, the loss of any amount of income constitutes a hardship, but the applicant has not demonstrated that the loss of her contribution to family income would constitute an extreme hardship, when combined with other hardship factors.

The applicant asserted that her removal from the United States would cause hardship to her children because they would be obliged to do household chores, such as cooking and cleaning. The AAO notes that a birth certificate in the record shows that one of the children was born during December 1991, and is now over 17 years old. Her added household obligations are typical of the restructuring of the division of labor expected when a family member is deported. Those additional duties do not constitute extreme hardship, even when combined with other hardship factors. Further, no evidence was provided to demonstrate that the children's additional obligations would occasion hardship to the applicant's husband.

In any event, the applicant's husband has indicated that he would accompany his wife to Haiti, presumably with their children, if she is forced to depart. He noted that he left Haiti 20 years ago, that he has no land or home there, that his children have never lived there, that it is unstable, and that unemployment is high there. However, the applicant failed to submit evidence concerning conditions in Haiti, or to demonstrate how these conditions will result in unemployment or other hardship to her spouse in particular.

Although the statements by the applicant and her spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

Further, the applicant and her husband did not discuss, on appeal, whether either has family in Haiti who could assist them, although the applicant stated, on February 15, 1996, that her mother was still living in Haiti. The applicant has not demonstrated that her removal to Haiti would cause extreme hardship to her husband if he and their children chose to accompany her.

The remaining analysis is that of the emotional hardship that would result to the applicant's husband from the applicant's removal from the United States if he and the children remained in the United States.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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 *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record suggests 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.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.