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U.S. Citizenship
and Immigration
Services

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MAR 03 2009

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

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).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Cuba 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident, has two lawful permanent resident parents and a U.S. citizen child, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The 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 Director*, at 2, dated October 31, 2006.

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and that his removal would result in extreme hardship to his spouse. *Brief in Support of Appeal*, at 3-5, dated June 1, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's immigration forms and documents, and letters of support for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on October 18, 2002, the applicant presented a Paraguayan photo-substituted passport in order to board an airplane departing Brazil for the United States. He arrived in Miami, Florida as a [REDACTED] passenger traveling to Nassau, Bahamas. The record includes the applicant's airline ticket and a copy of his fraudulent passport. It also contains the applicant's sworn statement in which he admits under oath that his true intention was not to go to Nassau, Bahamas, but to come to the United States and request asylum. *Form I-877, Record of Sworn Statement in Administrative Proceeding*, at 4, dated October 18, 2002. As the applicant misrepresented himself as a [REDACTED] passenger in order to seek admission to the United States, he is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO finds *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984) persuasive in reaching this finding.

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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant is relevant only to the extent it causes hardship to a qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to a qualifying relative must be established whether the qualifying relative relocates to Cuba or remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Cuba. The applicant states that he ran away from the Cuban government because he is a veterinarian and it is not easy for a professional to leave Cuba. He asserts that his life may be in danger if he returns. *Applicant's Statement*, dated September 25, 2006. While the AAO notes the applicant's claim regarding his fear of return, the record does not include any evidence to support this claim or how it would affect a qualifying relative residing in Cuba. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). Moreover, the AAO observes that the appropriate remedy for an individual who fears return to his or her country of origin is to file an affirmative asylum claim under section 209 of the Act or to raise his or her concerns in removal proceedings before an immigration judge. Based on the record, the AAO finds that insufficient evidence has been provided to establish extreme hardship to the applicant's spouse in the event of relocation to Cuba.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse is experiencing a lot of anxiety due to the uncertainty of the applicant's case, she has a two-year old baby, the baby may grow up without getting to know his father, it is very difficult for a single mother to bring up a child by herself, the applicant is the head of the household, the family will suffer great economic hardship, the applicant's spouse cannot work due to caring for the baby, and they may have to rely on public welfare and assistance. *Brief in Support of Appeal*, at 5, dated June 1, 2007. The record does not include evidence to support counsel's claim of emotional, financial or any other type of hardship to the applicant's spouse. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Based on the record, the AAO finds that insufficient evidence has been provided to establish extreme hardship to the applicant's spouse in the event that she remains in the United States without the applicant.

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, *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. 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.