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U.S. Citizenship
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FILE:

Office: NEW YORK, NY

Date:

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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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Guyana 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a Legal Permanent Resident and 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 her spouse and United States citizen child.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 4, 2007.

On appeal, counsel contends that the director did not clearly apply the correct standard of proof in rendering the decision. Counsel further states that the director failed to consider the evidence in the aggregate. Counsel indicates that he believes that the applicant's 2000 entrance using a photo-substituted passport should be considered an Entrance Without Inspection (EWI) rather than a misrepresentation. *Brief in Support of Appeal*, dated June 19, 2007.¹

The record contains a brief from counsel as well as: affidavits from the applicant; an affidavit from the applicant's spouse, dated March 29, 2007; a copy of the applicant's spouse's Permanent Resident Card; a copy of the applicant's marriage certificate; the birth certificate of the applicant's spouse's child from a previous marriage and documents associated with his child support payments; a letter from the applicant's spouse's place of employment; and income tax returns from both the applicant and her spouse. The record also contains previously filed applications for immigration benefits and their corresponding decisions. The entire record was reviewed and considered in rendering this decision.

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 AAO notes that counsel requested that the appeal also be considered a motion to reopen the applicant's Form I-485 Application for Adjustment of Status. The AAO does not have jurisdiction over Adjustment applications. Therefore, the AAO will only address issues related to the appeal of decision of the decision on the Application for Waiver of Grounds of Inadmissibility (Form I-601).

- (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.

The record reflects that the applicant entered the United States in October of 2000, using a passport of an individual from Barbados. The applicant was inspected by a United States Immigration Inspector and presented this passport to the inspector, representing it as her own true passport bearing her true identity when she entered. The director found the applicant was inadmissible because of this misrepresentation and denied her Form I-485 accordingly on February 27, 2007².

Counsel contends that it was the intent of Congress to treat those who entered the United States with photo substituted passports as individuals who had entered without inspection (EWI). He further states that the applicant was not questioned by the immigration officer she encountered at the time of that entry. *Brief filed with Motion to Reopen*, dated March 22, 2007; *Brief filed on appeal*, dated June 19, 2007. In support of this assertion, counsel cites *Matter of Areguillin*, 17 I & N 308 (BIA 1980). Counsel further cites *Matter of Areguillin* and states that the applicant has not made a misrepresentation as defined by this case. *Matter of Areguillin* does state that an applicant who gains admission to the United States upon a knowing false claim to [United States] citizenship has not been "inspected and admitted" refer to citing *Matter of F--*, I & N Dec. 706 (BIA 1966). However, the applicant in this case used the passport of an individual from a third country, Barbados. Therefore, the logic used in this case is not relevant and does not apply.³

² In the February 27, 2007 decision, the director erroneously stated that this misrepresentation lead to the applicant being inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (Act), which states that applicants who have made false claims to United States citizenship are inadmissible. The record does not support that the applicant has made false claims to United States citizenship. The director's assertion in this decision that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality is withdrawn accordingly. In this case, the director also correctly stated that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

³ The AAO notes that counsel may have provided reference to this case due to the Director's erroneous statement on her decision regarding the applicant's Application for Adjustment of Status (Form I-485) that a section 212(a)(6)(C)(ii) inadmissibility applied to this applicant. *Decision of the Director regarding the applicant's Form I-485 application*, dated February 27, 2007. While this case would provide guidance if a section 212(a)(6)(C)(ii) inadmissibility was present, because the director's reference to that inadmissibility was in error, the guidance provided by this case is not relevant. The AAO further notes that though counsel indicated that the applicant did not make a misrepresentation as defined by *Matter of Areguillin*, after careful review and consideration of that case, the AAO did not find that it provides a definition of misrepresentation.

The AAO finds that *Matter of Areguillin* supports the director's finding that the applicant made a material misrepresentation, as it held that any alien who physically presents himself for questioning is inspected even though he volunteers no information and is asked no questions by the immigration authorities. The applicant's affidavit indicates that she presented herself for questioning. *Affidavit of* [REDACTED] dated March 29, 2007. Therefore, using the reasoning in this case, the applicant was inspected and cannot be considered to have entered without inspection.

Further, while *Matter of Areguillin* does not define misrepresentation, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) does outline the elements of a material misrepresentation, as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

Based on this standard, the applicant's misrepresentation was material. Though the applicant states that she did not speak to the immigration inspector when the applicant presented a fraudulent passport to that inspector when she arrived for immigration inspection, she did misrepresent her identity to that immigration official in order to procure the benefit of entry to the United States. When an arriving individual presents herself for immigration inspection, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to her, and whether any United States government agencies possess information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented her identity, she cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether she possessed valid entry documents of her own, or whether the United States possessed information that has a bearing on the applicant's eligibility for entry. Because the applicant made a willful misrepresentation, the AAO finds that the director was correct when she stated that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from 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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

At the time the director issued the decision on the applicant's Form I-485, the applicant was not the spouse of a Legal Permanent Resident or a United States citizen, nor was she the daughter of a Legal Permanent Resident of a United States citizen. The director found that because applicant did not have a qualifying family member, she was not entitled to file a Form I-601 waiver under section 212(i) of the Act.

However, the applicant married her current spouse on March 16, 2007, seventeen days subsequent to the director's denial of her Form I-485. On March 26, 2007, the applicant filed a motion to reopen her Form I-485, which was granted on June 4, 2007. However, though the director reopened the Form I-485 application, she denied both the I-485 application and the applicant's Form I-601 application on June 4, 2007. In her decision regarding the applicant's Form I-601 application, the director stated that though counsel submitted evidence in support of the application, it was not sufficient to establish that the applicant's spouse would experience extreme hardship if a waiver was not granted. The director also noted the recency of the marriage and stated that though the applicant claimed to have a child with her spouse, no birth certificate was submitted as proof of this claim. *Decision of the District Director*, dated June 4, 2007.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to the applicant's qualifying relative, in this case her husband, must be established in the event that he accompanies the applicant or in the event that he remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Guyana to remain with the applicant. *Brief in Support of Appeal*, dated June 19, 2007. In support of this assertion, counsel submits an affidavit from the applicant's spouse. In his affidavit, the applicant's spouse states that though he was born in Guyana, he does not recollect his life in that country nor does he have immediate family members who remain there. *Extreme Hardship Affidavit from [REDACTED]* dated March 29, 2007. He also states that he has been a Legal Permanent Resident of the United States since November 28, 1989, when United States Citizenship and Immigration Services (USCIS) records indicate that the applicant's spouse would have been 22 years old. He goes on to say that he entered the United States, "at a very young age." *Id.* However, he does not state how old he was when he first entered, nor does counsel submit evidence of the date of the applicant's spouse's first entry. Because of this lack of evidence, the AAO cannot determine the applicant's length of residence in the United States, nor can the AAO determine whether the applicant's spouse spent any of his formative years outside of Guyana.

Counsel further asserts that the applicant's spouse would not be able to provide sufficient income to support the applicant and their child, nor would he be able to maintain his child support payments to his child from a prior marriage if he relocated to Guyana. *Extreme Hardship Affidavit from [REDACTED]* dated March 29, 2007. Evidence in the record indicates that the applicant's spouse is required to submit \$446.32 per month in child support to his former spouse. *Final Order of Court*, dated May 23, 2002. Counsel has also submitted evidence that the applicant's spouse currently earns approximately \$25,000.00 per year at his place of employment. *Letter from NYLabel*, dated March 19, 2007. However, though counsel has stated that the applicant's spouse would not be able to obtain employment that would be sufficient to continue to provide child support to his child from his first marriage and also support the applicant and the child he has with her, counsel has failed to submit country conditions information or other evidence regarding economic conditions in Guyana in support of this claim. Therefore, because of the lack of evidence in the record, the AAO cannot find that the applicant would experience economic hardship if he were to relocate to Guyana to reside with the applicant.

Counsel also states that the applicant's spouse would experience difficulty if he continues to reside in the United States without the applicant and a waiver is not granted. The applicant's spouse states that the thought of not residing with his child with the applicant causes him difficulty. *Extreme Hardship Affidavit from [REDACTED]* dated March 29, 2007. The applicant's spouse also states that his son would not receive the same educational resources in Guyana as those he currently receives in the United States. *Id.* However, counsel has not submitted country conditions information or other evidence regarding educational opportunities in Guyana in support of this assertion.

Counsel further fails to state what, if any, economic impact the applicant's departure would have on her spouse if he were to remain in the United States separated from the applicant, nor does counsel address whether there are any medical or other considerations that would cause the applicant's spouse to experience difficulties that would rise to the level of extreme hardship if he remains in the United States and a waiver is not granted. Therefore, because of the lack of evidence in the record

the AAO does not find that the record supports counsel's claim that the applicant's spouse would experience extreme hardship if he were to remain in the United States separated from the applicant.

It is noted that the applicant's spouse states that, while his marriage to the applicant occurred in March of 2007, he was in a relationship with and resided with her prior to that date and has a child with her who was born in New York on December 20, 2002. However, despite counsel's assertion on appeal, the record does not contain a birth certificate or other evidence regarding this child's date of birth, place of birth or regarding the paternity of the child. The only birth certificate in the record on which the applicant's spouse appears as the father is for his son with his prior spouse. Counsel further fails to submit evidence in support of the claimed relationship between the applicant's spouse and the applicant or of their co-habitation prior to the date of their marriage.

The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. The evidence currently in record, however, does not establish that the applicant's spouse will be unable to maintain his financial situation if the applicant departs from the United States. Moreover, the U.S. Supreme Court 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.

Although the statements of [REDACTED] are relevant and are taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if a waiver is not granted. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant and will suffer financially as a result of the loss of his wife's income. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the

Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.