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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: NEW YORK, NY

Date:

MAY 20 2009
MAY 20 2009

IN RE:

[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.

A handwritten signature in black ink, appearing to read "John F. Grisson".

John F. Grisson
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen is now before the AAO. The motion will be granted. The previous decision will be affirmed and the waiver application denied.

The applicant is a native and citizen of Trinidad and Tobago 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 enter the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not establish that the applicant's spouse, [REDACTED] would suffer extreme hardship if she were to be removed from the United States. The application was denied accordingly. *Decision of the District Director*, dated April 8, 2008. The AAO reached this same conclusion following its review of the record. *Decision of the AAO*, dated November 26, 2008.

On motion, counsel states that the AAO erred in dismissing the applicant's appeal as [REDACTED] would suffer extreme hardship if the applicant were removed from the United States. In support of her assertion, counsel submits two psychological evaluations of [REDACTED] and country conditions information on Trinidad & Tobago. *Form I-290B, Notice of Appeal or Motion*, dated December 23, 2008.

The record indicates that, on July 23, 1999, the applicant presented her Trinidadian passport with a fraudulent ADIT stamp to an immigration inspector at the John F. Kennedy International Airport. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, which 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.

The AAO notes 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 a qualifying family member, i.e., the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, the only qualifying relative is [REDACTED], the applicant's spouse. Hardship the alien herself experiences or that is felt by other family members is not considered in waiver proceedings under section 212(i) of the Act, except as it would affect the applicant's spouse. Should the record establish that [REDACTED] would experience extreme hardship, it will be 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 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

The AAO notes that the applicant must prove that [REDACTED] would experience extreme hardship whether he relocates to Trinidad or remains in the United States without the applicant, as he is not required to reside outside the United States based on the denial of the applicant's waiver request.

On motion, counsel has submitted the following additional evidence to establish the applicant's claim to extreme hardship: a psychological evaluation of [REDACTED] prepared by psychologist [REDACTED] dated December 15, 2008; a letter concerning [REDACTED] emotional state prepared by psychologist [REDACTED] dated December 19, 2008; and country conditions on Trinidad and Tobago published by the Department of State, dated April 13, 2007. This documentation, as well as all previously submitted evidence, was considering in reaching a decision in this matter.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Trinidad. On motion, counsel asserts that [REDACTED] would suffer extreme hardship if he relocated with the applicant based on the significantly lower standard of medical care in Trinidad & Tobago. Counsel quotes from the Department of State's Country Specific Information on Trinidad & Tobago, dated April 13, 2007, regarding medical care in the islands and specifically notes the recommendation that travelers obtain medical insurance before visiting. Counsel also contends that [REDACTED] would find it difficult to obtain employment in Trinidad as the unemployment rate is high and he is a foreigner. The December 19, 2008 letter from [REDACTED] and the psychological evaluation prepared by [REDACTED] report that [REDACTED] is currently supporting an 11-year-old son from a prior relationship, his retired mother and his disabled brother, and cannot leave the United States due to his financial and family responsibilities. [REDACTED] indicates that [REDACTED] is the primary caretaker for his mother and brother, visiting them at least three times a week.

The AAO acknowledges the country conditions material provided by counsel and the information reported by the two psychologists concerning [REDACTED]'s family and financial obligations, but does not find this evidence sufficient to establish that he would suffer extreme hardship if he moved to Trinidad & Tobago with the applicant. It notes that the record fails to address how [REDACTED], who is not documented as having a medical problem that would require treatment upon relocation, would be affected by the lower standard of medical care in Trinidad & Tobago. Further, the country conditions materials submitted by counsel do not discuss the economy or employment situation in Trinidad & Tobago and, therefore, fail to support counsel's claims regarding the difficulties that [REDACTED] would face in obtaining employment. 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).

The AAO also observes that the record does not support the statements made by [REDACTED] and [REDACTED] concerning [REDACTED] financial support of an 11-year-old son, his mother and a disabled brother. The record does not document that [REDACTED] has a son from a prior relationship, or that he financially supports this child. It further fails to contain any proof of the financial support that [REDACTED] has stated that he provides to his mother and brother. Going on record without supporting documentation is not sufficient to 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)). Accordingly, the AAO does not find the record to establish that [REDACTED] would experience extreme hardship if he relocated to Trinidad & Tobago with the applicant.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In his evaluation of [REDACTED], dated December 15, 2008, [REDACTED] found the applicant's spouse's symptomatology to indicate that he was suffering from Major Depressive Disorder as a result of his fear of separation from the applicant, and referred him for psychotherapy. [REDACTED], who, counsel indicates, is [REDACTED] psychotherapist also states that the applicant's spouse has developed depressive symptomatology because of his fear that he and the

applicant will be separated. She reports that she has begun to treat him with Cognitive Behavioral Therapy.

Although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation prepared by [REDACTED] is based on a single December 13, 2008 interview with [REDACTED], thereby rendering its conclusions speculative and diminishing its value to a determination of extreme hardship. The brief December 19, 2008 letter written by [REDACTED] indicates that she has begun treating [REDACTED] for his depressive symptomatology, but fails to identify the symptomatology to which she refers or to indicate its severity. Moreover, while [REDACTED] states that [REDACTED] "is diagnosed with Major Depressive Disorder," it is not clear from her letter whether she has reached this diagnosis independently or is referencing the conclusion reached by [REDACTED] based on his interview with the applicant's spouse. As a result, the AAO does not find the record to demonstrate that [REDACTED] would experience extreme emotional hardship if he and the applicant were separated as a result of her inadmissibility.

Counsel also asserts on motion that the applicant's medical problems have affected her spouse, but does not indicate how or to what extent [REDACTED] has been affected. The AAO notes that, on appeal, a letter from [REDACTED] the Hindu priest at the applicant's place of worship, stated that [REDACTED] would be concerned about the applicant's health in Trinidad, which would lead to mental stress and fatigue. In its November 26, 2008 decision, the AAO observed that the record contained no documentary evidence to support [REDACTED] statements. It continues to find the record to lack the documentation necessary to establish how any concerns that [REDACTED] may have about the applicant's health would affect him.

Counsel further contends that the applicant's adult children have no lawful immigration status in the United States and, therefore, have limited access to continued education and employment opportunities. She also asserts that the health condition affecting the applicant's youngest child has affected his ability to care for himself and that none of the applicant's children can care "100% for themselves." As previously noted, the applicant's children are not qualifying relatives for the purposes of a 212(i) waiver proceeding and the record does not indicate how the applicant's spouse would be affected as a result of any problems they would experience if the applicant were to be removed from the United States. Further, the record, as noted on appeal, does not provide the documentation necessary to establish the extent to which the applicant's youngest son's recurrent toxoplasmosis retinochoroiditis affects his ability to function.

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 removed.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were removed from the United States. While the AAO acknowledges that [REDACTED] would experience hardship as a result of the applicant's inadmissibility, the record does not distinguish that hardship from the distress and upheaval routinely created by the removal of a spouse. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remained in the United States following her removal.

The documentation in the record, whether considered separately or in the aggregate, fails to establish the existence of extreme hardship to the applicant's spouse caused by the denial of the applicant's waiver application. 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.

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 prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.