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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
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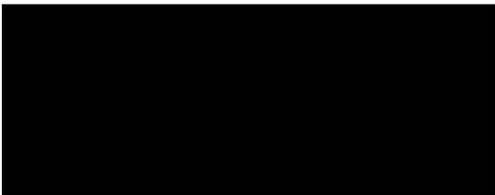
FILE: [REDACTED] Office: NEW YORK (GARDEN CITY)

Date: SEP 25 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:



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, 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 Guyana who entered the United States on October 5, 1989 with a fraudulent Guyanese passport and U.S. visa. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She 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 husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 24, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred as a matter of law in finding that the applicant had not established extreme hardship to her U.S. Citizen husband if her waiver application is denied. *See Notice of Appeal to the AAO (Form I-290B)*. Specifically, counsel asserts that the applicant’s husband relies on her for emotional and financial support and to help him manage his medical condition. *See Brief in Support of Appeal* at 2-3. Counsel additionally claims that the applicant’s husband would suffer extreme hardship if he relocated to Guyana due to his age, his lack of ties to the country, economic and social conditions there, and lack of access to adequate medical care there. *Brief* at 6-7. In support of the waiver application the applicant submitted a letter from her husband and other letters in support of the applicant from friends, former employers, and other individuals. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. 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.

In the present case, the record reflects that the applicant is a fifty-six year-old native and citizen of Guyana who has resided in the United States since October 1989, when she was admitted at New York, New York after presenting a passport and visa belonging to another individual. The applicant's husband is a fifty-four year-old native of Barbados and citizen of the United States whom she married on April 6, 2001. They currently reside together in Brooklyn, New York.

Counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is removed and he remains in the United States because he relies on her for financial support. In his brief counsel states that the applicant's husband earns only \$18,000 per year and relies on supplemental income earned by the applicant to pay their living expenses, including rent, utilities, food, and transportation. *Brief* at 3-4. No documentation of the family's expenses was submitted to support the assertions made by counsel concerning their difficulties paying their living expenses or the reliance of the applicant's husband on the applicant for financial support. Further, there is no evidence that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband states that the applicant is his soul-mate and he "can not begin to imagine being separated from her." There is no evidence on the record concerning his mental health or the potential effects of being separated from her. The record does not establish that the emotional effects of being separated from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his concern over the prospect of separation from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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.

Counsel asserts that the applicant's husband would suffer extreme hardship if the applicant were removed because he suffers from diabetes and relies on her to ensure he follows his prescribed diet and takes his medications. *Brief* at 6. Counsel further asserts that the applicant would be "incapable of adequately taking care of his diabetic needs . . . in Guyana." *Brief* at 7. In support of this assertion counsel quoted from a book by a Guyanese author as well as travel information from the U.S. Department of State. *Brief* at 7-8. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The record does not establish that the applicant's husband suffers from such a condition. Counsel submitted no medical evidence confirming that the applicant's husband has been diagnosed with diabetes. 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)).

Counsel asserts that the applicant's husband would be unable to relocate to Guyana because he would have difficulty finding employment or paying for medical care. Counsel cites the CIA World Factbook, which states that the unemployment rate in Guyana in 2000 was 9.2%, and quotes other sources, including an article from 2001 entitled "Guyana Under Siege" a book by a "noted Guyanese author" indicating that unemployment is actually much higher than reported. *Brief* at 7. Counsel did not submit any documentary evidence concerning current economic conditions in Guyana, and cited an article from an unfamiliar source written in 2001 without providing copies or any additional, current information. As noted above, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *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). Counsel further cites information on access to medical

care in Guyana from the U.S. Department of State, but, as noted above, counsel failed to submit any evidence that the applicant's husband suffers from a significant medical condition as claimed.

The evidence on the record is insufficient to establish that any emotional and financial hardship the applicant's husband would suffer would be other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

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 has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act.

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.