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

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FILE:

[REDACTED]

Office: ATLANTA, GA

Date: **SEP 25 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.

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, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Thailand 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen. The applicant 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 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 District Director*, at 2, dated March 31, 2006.

On appeal, counsel asserts that the district director erred in denying the waiver application on the grounds that the emotional hardship did not rise to the level of extreme hardship, and she erred in failing to inform the applicant and her spouse that they had the right to provide additional evidence of extreme hardship. *Form I-290B Attachment*, received May 1, 2006.

While the AAO notes counsel's assertion that the district director erred in failing to issue a request for evidence or any other correspondence asking the applicant for additional evidence to prove extreme hardship, the AAO notes that the regulation at 8 C.F.R. § 103.2(b)(8) requires U.S. Citizenship and Immigration Services (USCIS) to request additional evidence only in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." A district director is not required to issue a request for further information in every potentially deniable case. If the district director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Moreover, even if the district director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The AAO observes that the applicant has used the opportunity provided her on appeal to submit additional evidence in support of her waiver application.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's statement, a psychological evaluation of the applicant's spouse, and medical records for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on July 27, 1997, the applicant procured admission to the United States with another person's passport. Based on the applicant's misrepresentation, she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.

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, in this matter, the applicant's spouse. Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the 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).

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 lawful permanent resident or United States citizen family ties to 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. The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Thailand or in the United States, as he 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 her spouse in the event that he resides in Thailand. The applicant's spouse states that he does not speak Thai, his family is in the United States, he has no family ties outside of the United States, he sees his family often, he and the applicant spend a lot of time with his family, the only way that he can make a living in the applicant's town is as a farmer, and he does not know anything about farming. *Applicant's Spouse's Statement*, at 1-2, dated September 5, 2006. The applicant's spouse was

evaluated by a psychologist who states that the applicant's spouse feels responsible for caring for his parents, his mother has a history of strokes, he promised her he would take care of her in her home, his father had surgery to remove blockages in his arteries and requires care from a cardiologist, he feels enormous guilt at the thought of abandoning his parents to move to Thailand, his spouse's family lives in a rural area where the only regional work is farming, and there are no jobs for people over 30 year of age in Thailand. *Psychological Evaluation*, at 2, dated June 6, 2006. The psychologist also states that the applicant's spouse has a heart murmur, would lose access to the high-quality readily available health care in the United States, would likely develop a reactive depression due to tremendous guilt from abandoning his aging parents, and would experience tremendous frustration from losing everything he worked for. *Id.* at 4. She states that the applicant had an ectopic pregnancy in 2002, a future pregnancy would be high risk and require specialized care, and the applicant would not have access to that care in Thailand. *Id.* at 3. The record does not include documentary evidence of the severity of the applicant's spouse's medical problem or the type of treatment he is receiving, the medical problems of his parents, the ectopic pregnancy of the applicant or her likelihood of future high risk pregnancies, the requisite obstetrical care being unavailable, the inability of the applicant or her spouse to obtain non-farming related employment in Thailand, or any other forms of hardship. 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)). However, considering the totality of the hardship factors, the AAO finds that the applicant's spouse would experience extreme hardship if he relocated to Thailand.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he owns two businesses, he would be unable to successfully run the businesses without the applicant, she handles the accounting for the businesses, she answers the telephones and takes care of the behind-the-scenes aspects of the businesses, she provides support for his health condition, he has a heart murmur that requires him to see a cardiologist twice a year, his risk of heart disease has increased and he has EKGs every year to keep his heart healthy. *Applicant's Spouse's Statement*, at 1. The applicant states that her spouse would have a difficult time running his businesses without her. *Applicant's Statement*, at 2, dated August 26, 2006. In her evaluation, the psychologist states that the applicant's spouse owns his own security company; he also works for two security companies; his business generates \$30,000 annually; he and the applicant owe \$27,000 in medical expenses for the applicant's ectopic pregnancy; and his family is helping him financially with his business. *Psychological Evaluation*, at 2. The psychologist states that the applicant's spouse is suffering from generalized anxiety disorder as a result of his fear of separation from the applicant and that his symptoms include irritability and angry outbursts, increased drinking, sleep disturbance, difficulty concentrating, and feeling agitated much of the time. *Id.* at 2-4. The record does not include documentary evidence of the applicant's spouse's businesses or the role the applicant plays in those businesses, the applicant's spouse's medical expenses and general expenses, the severity of his medical problems, or any other type of hardship that he would encounter. The AAO also notes that the psychological evaluation of the applicant's spouse was based on a single interview and that it, therefore, fails to reflect the insight and analysis commensurate with an established relationship with a mental health professional, diminishing its value to a determination of extreme hardship. The

record does not include sufficient evidence that the applicant's spouse would experience extreme hardship if he remained in the United States.

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 deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(a)(9)(B) 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.