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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

#5

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 17 2010**

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Argum Sikka
for

Perry Rhew
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 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 seeking to procure admission into the United States by willful misrepresentation. The applicant 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 his U.S. citizen wife, daughter, and mother, and his lawful permanent resident father.

The director concluded that the applicant 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*, dated March 25, 2009.

On appeal, counsel for the applicant contends that the applicant's wife and parents will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B*, dated April 22, 2009.

It is noted that on or about June 30, 1997 the applicant filed a Form I-601 application for a waiver of his inadmissibility, and it was denied on July 24, 2001. On or about August 29, 2001, the applicant filed a Form I-290B appeal of the denial. However, the record does not contain a decision from the AAO regarding the August 29, 2001 appeal. All documentation that the applicant submitted with the August 29, 2001 appeal is contained in the current record. In the present matter the AAO has considered the entire record to determine whether the applicant is eligible for a waiver, including all materials he provided with the August 29, 2001 appeal and the present appeal filed on April 24, 2009.

The record contains, in pertinent part: a brief and statements from counsel; copies of the applicant's birth certificate and marriage record; certification from the Miami-Dade County, Florida Police Department that the applicant does not have a criminal record in the jurisdiction; copies of documents associated with the applicant's ownership of a home; letters from physicians regarding the applicant's mother's, father's, and wife's health; copies of tax records for the applicant and his wife; copies of the applicant's wife's U.S. passport and naturalization certificate; a copy of the applicant's father's lawful permanent resident card; a copy of the applicant's mother's naturalization certificate; statements from the applicant's wife, father, daughter, brother, sister, nephew, friends, and the applicant; copies of the applicant's daughter's birth certificate and U.S. passport; documentation in connection with the applicant's daughter's academic activities; copies of documents in connection with the applicant's business; copies of news articles on conditions in Cuba, and; documentation in connection with the applicant's prior proceedings in Immigration Court and before the Board of Immigration Appeals (BIA). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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, in pertinent part, 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 immigrant 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 on September 25, 1986 the applicant attempted to enter the United States at the [REDACTED] by presenting a counterfeit Ecuadorian passport with a fraudulent U.S. visa. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These factors include 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.

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).

On appeal, counsel contends that the applicant's wife and parents will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated June 1, 2009. Counsel asserts that the applicant's daughter will also experience hardship, and that such difficulty will

contribute to the hardship of the applicant's wife. *Id.* at 2. Counsel states that all elements of hardship to the applicant's wife and parents must be considered in aggregate, including their health problems and financial difficulty. *Id.*

Counsel explains that the applicant's parents have been in the United States since the 1980s and that they are elderly and in poor health. *Id.* Counsel provides that the applicant's parents depend on the applicant for financial support and for transportation for medical appointments, grocery shopping, and day-to-day activities. *Id.* at 3. Counsel adds that the applicant's parents cannot relocate to Cuba as they would lack access to proper medical care. *Id.* Counsel asserts that the applicant's parents would suffer should they lose the applicant's financial support. *Id.*

Counsel provides that the applicant's wife depends on the applicant for economic support, and that she would be unable to care for their daughter in his absence. *Id.* Counsel indicates that the applicant's wife would face poor conditions should she reside in Cuba. *Id.* She notes that the applicant's daughter, as a U.S. citizen, would be prohibited from entering Cuba under U.S. federal law, and thus the family would face separation. *Id.*

The applicant's father states that he has been sick for two years and that he would like to spend his last days in the company of the applicant. *Statement from the Applicant's Father*, dated August 30, 2008. He indicates that the applicant takes him to doctor's visits two or three times per week to monitor his health conditions. *Id.* at 1. He states that he has resided in the United States since August 1986. *Id.*

The applicant's mother states that she has resided in the United States for over 22 years and that she is a U.S. citizen. *Statement from the Applicant's Mother*, dated August 30, 2008. She explains that she, the applicant's father, and the applicant's brother and sister came to the United States without the applicant because the applicant was over age 21 and could not benefit from their immigration status. *Id.* at 1. She states that the applicant's father has had a blood disorder for over two years for which there is no cure. *Id.* at 2. She indicates that the applicant has provided significant financial support for her and the applicant's father, and that he transports them to medical appointments. *Id.*

The applicant's wife provides that she has been married to the applicant for over 14 years and that they have raised their daughter together. *Statement from the Applicant's Wife*, dated August 30, 2008. She states that she and the applicant have sponsored and financially helped both of their families in the United States and in Cuba, including the applicant's parents in the United States. *Id.* at 1. She provides that the applicant's immigration difficulties have rendered them unable to travel for business or pleasure, thus greatly limiting their ability to vacation. *Id.* She states that she has suffered from high triglycerides, high blood pressure, and anemic state, and that the applicant cares for her as well as his parents. *Id.* She adds that she underwent surgery on her gall bladder and that she suffers from gynecological complications. *Id.*

The applicant's wife previously noted that the applicant helped raise his stepdaughter, and that he assists her with her studies and financial needs while she attends Florida International University. *Prior Statement from the Applicant's Wife*, dated November 19, 2004.

The applicant's daughter states that the applicant assists her with school work and school trips, and that he has been a great father. *Statement from the Applicant's Daughter*, dated August 30, 2008. She adds that her family would like for the applicant to have a legal status in the United States so that they can take vacations around the world. *Id.* at 1.

The record contains a prior statement from the applicant in which he notes that he would face difficult circumstances should he return to Cuba, including a lack of employment opportunities, separation from the benefits and conveniences of life in the United States, limitations on his family's ability to visit him in Cuba, limitation on his freedom to practice his religion, and possible persecution. *Prior Statement from the Applicant*, dated May 1, 2000.

The applicant provides a letter from his father's physician, Dr. [REDACTED] who states that the applicant's father suffers from the following conditions: "[REDACTED] Status Post Spanectomy, being followed up by Hermatologist," "BPH elevated PSA, undergoing work up for possible prostate CA," [REDACTED] and [REDACTED]. *Letter from Dr. [REDACTED]*, dated April 15, 2009.

The applicant presents a second letter from Dr. [REDACTED] regarding his mother's health that indicates that his mother has the following conditions: "HTN," Hyperlipidemia, Glaucoma, and "Major Depressive Disorder being Follow [sic] up by Psychiatric." *Letter from Dr. [REDACTED]* regarding Applicant's Mother's Health, dated April 15, 2009

The applicant submits a letter from a medical practice that indicates that his wife is being treated for Anemia and Hyperlipidemia, and that she was recuperating from a Gastrointestinal surgical intervention as of August 29, 2008. *Letter from University Medical Center regarding Applicant's Wife's Health*, dated August 29, 2008.

In a brief submitted with the applicant's prior appeal, his representative indicated that the applicant's wife, as a Cuban national, would suffer persecution should she return to Cuba. *Brief in support of Prior Appeal*, dated August 21, 2001.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship should he be compelled to reside outside the United States. The applicant has not provided sufficient evidence and explanation to show that his wife will endure extreme hardship should she remain in the United States without him.

The applicant's wife indicates that she suffers from health problems and that the applicant cares for her. The AAO has carefully examined the letter from a medical practice regarding the applicant's wife's health. Yet, the letter is brief and it does not indicate the level of ongoing care the applicant's wife requires, or whether her health creates difficulty in performing common tasks. Nor does the applicant's wife specifically describe the assistance the applicant provides for her. The record reflects that the applicant's wife works, thus it is evident that she is capable of engaging in employment despite her health challenges. The applicant has not shown that his wife in fact requires his assistance due to her physical health.

Counsel indicates that the applicant's wife depends on the applicant for economic support, and that she would be unable to care for their daughter in his absence. However, the most recent tax records submitted by the applicant reflect that his wife earned \$32,580 in 2008, while they reported a business profit of \$12,834, presumably as the applicant's contribution to their household income. The applicant has not provided an account of his wife's regular expenses such that the AAO can conclude that she would be unable to meet her and her daughter's needs in the applicant's absence. Counsel's general statement about the applicant's wife's financial situation is not sufficient to show that she will endure economic hardship. 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).

The record contains references to hardships experienced by the applicant's daughter. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO has examined the statement from the applicant's daughter, and recognizes that she faces significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that she will endure consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his daughter's emotional hardship will elevate his wife's challenges to an extreme level.

The applicant and his wife have been married for 15 years. The AAO acknowledges that the applicant is an integral part of his family and that his wife will endure emotional hardship should she reside separately from him. However, the applicant has not distinguished his wife's psychological difficulty from that which is commonly expected when spouses reside apart due to inadmissibility. Federal court and administrative 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.

All stated elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will suffer extreme hardship should he depart the United States and she remain.

The applicant has not shown that his mother or father will endure extreme hardship should he reside outside the United States and they remain. The record contains letters from doctors regarding the applicant's parents' health. The AAO has closely examined this documentation to determine the degree of their impairment, if any, and medical needs. The letters from doctors are brief, and although they reference conditions suffered by each of the applicant's parents, they do not describe their symptoms or required treatment. The AAO is unable to determine the severity of the applicant's parents' health problems, their need for assistance, or their capacity to perform common tasks.

It is noted that the applicant has a brother and sister who immigrated to the United States with his parents. The applicant has not asserted that his siblings are unavailable to provide assistance to his parents in his absence. Thus, the record does not show that the applicant's mother and father would lack care and help in daily tasks should they require it.

Counsel provides that the applicant's parents depend on the applicant for financial support. However, the applicant has not provided any information or documentation regarding his parents' economic resources or expenses. Nor has the applicant submitted financial documentation to support that he in fact provides economic assistance to his parents. The applicant has not stated whether his brother or sister are capable of providing any needed financial help to his parents. Accordingly, the AAO is unable to conclude that the applicant's parents would have unmet financial needs should the applicant depart the United States.

The AAO recognizes that the applicant's parents wish for the applicant to reside in the United States so that they can have a unified family, and that they will endure significant emotional hardship should they be separated. However, the AAO is limited to the statements and evidence presented in the record, and the applicant has not provided information or documentation that distinguishes his parents emotional challenges from those that are commonly encountered when parents reside apart from a son due to a prior violation of immigration law. It is noted that, as the applicant's brother and sister reside in the United States, his parents will continue to have the support of two children should the applicant depart.

All stated elements of hardship to the applicant's parents, should they remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his mother or father will endure extreme hardship should he depart the United States and they remain.

The AAO recognizes that the applicant's wife, mother, and father would all endure significant hardship should they return to Cuba. They all departed Cuba due to poor conditions there and have resided in the United States for a lengthy duration. It is evident that they would endure significant emotional hardship should they now abandon their lives in the United States and return to Cuba. While the record does not clearly describe the extent of their needs for medical services, they are each under the supervision of doctors in the United States and it is evident that they would become separated from the medical professionals who provide their care should they reside in Cuba. The applicant's wife would be compelled to relinquish her employment and seek a new source of income in a difficult environment. The AAO acknowledges that political conditions in Cuba are harsh and numerous human rights abuses have been documented by the U.S. Department of State. 2009

Human Rights Report: Cuba, U.S. Department of State, dated March 11, 2010. Thus, the record supports that the applicant's wife and parents would endure extreme hardship should they return to Cuba.

However, an applicant must establish extreme hardship to his or her qualifying relatives should they choose to join the applicant abroad, and should they choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). Thus, as the applicant has not shown that his wife, mother, or father would suffer extreme hardship should they remain in the United States, he has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required for a waiver under section 212(i) 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.