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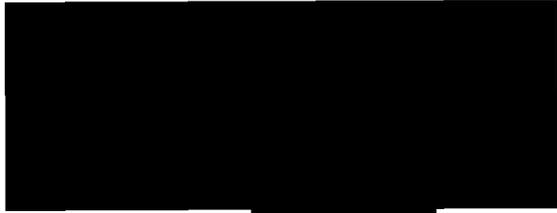
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: PHILADELPHIA, PA
(consolidated therein)

Date: MAR 06 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:

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana 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 having entered the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the father of two United States citizen sons and one stepdaughter. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife, sons, and stepdaughter.

The District Director found 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 May 17, 2006.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant's "wife would not suffer extreme hardship were applicant removed from the U.S.," and "in not analyzing in the aggregate all the evidence presented by [the applicant]." *Form I-290B*, filed June 16, 2006.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant's wife, a psychological evaluation of the applicant and his family, letters of recommendation, banking and tax documents, and a country conditions report on Guyana. 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, that:

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that, on April 12, 1996, the applicant entered the United States by presenting a photo-substituted Guyanese passport. On March 19, 2001, the applicant's lawful permanent resident wife filed a Form I-130 on behalf of the applicant. On November 1, 2004, the applicant's Form I-130 was denied. The applicant's spouse appealed the Form I-130 denial to the Board of Immigration Appeals (BIA). On January 11, 2005, the applicant's Form I-130 was approved. On November 29, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On May 16, 2006, the District Director denied the applicant's Form I-485. On May 17, 2006, the District Director denied the applicant's Form I-601, finding the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. On June 16, 2006, the applicant, through counsel, filed a motion to reconsider the District Director's denial of his Form I-485. The AAO notes that the applicant's motion to reconsider has not been adjudicated.

Based on the applicant's use of a photo-substituted Guyanese passport to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) 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 to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children and stepchild would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children and stepchild is not considered in section 212(i) waiver proceedings except to the extent that it creates hardship for a 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).

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 *Cervantes-Gonzalez*, the BIA 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. The BIA has also 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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

On appeal, counsel contends that relocation would result in extreme hardship to the applicant’s spouse as forcing her children to move to Guyana would result in extreme hardship for her. Counsel also states that if the applicant’s spouse were to move to Guyana she would have to face the future in a land to which she is no longer connected and where employment for her and the applicant would be practically non-existent. The applicant’s wife states that when she lived in Guyana, she lived in poverty and she fears that she and her children would go back to that poverty if they joined the applicant in Guyana. The applicant’s wife states that her father died when she was 13 years of age¹ and her “mother had a medical

¹ The AAO observes that the record is not clear as to the family history of the applicant’s wife. Although the applicant’s wife indicates that her father died when she was 13 years of age, the Form G-325A, Biographic Information, for the applicant’s wife, dated March 16, 2001, shows both her parents as residing in Guyana.

condition preventing her from working. She was not able to support [them]. It was horrible.... When [the applicant's wife] was sixteen [she] started working long hours to support [her] mother." The applicant's wife states that at her and the applicant's ages, "no one would want to hire [them]. Also, the unemployment rate in Guyana is very high." The applicant's wife also claims that, if the family joined the applicant in Guyana, her children would be unable to receive a proper education.

In a psychological evaluation of the applicant's family dated June 10, 2006, [REDACTED] diagnoses the applicant's wife with major depressive disorder and generalized anxiety disorder. He reports that she greatly fears the loss of the family's healthcare, education, employment, family, friends, social service needs and community contacts if the family relocates to Guyana where there is racial hatred, economic devastation and many other social and political difficulties that would prevent them from living a safe and health life. [REDACTED] also notes that the applicant's wife has been prescribed anti-depressants through her physician and suffers from gastroesophageal reflux disease, that her daughter has been diagnosed with hypothyroidism and is on medication, and that her younger son has a heart murmur. He further reports that the applicant's sons have behavioral and educational issues and will be unable to receive the help they need in Guyana.

While the AAO notes the claims made by the applicant's wife regarding conditions in Guyana, it does not find the record to support them. The record includes a copy of the section on Guyana from the Department of State's Country Reports on Human Rights Practices – 2005. However, this general overview of human rights abuses in Guyana does not demonstrate how the applicant's wife would be affected by such abuses. Neither does it establish how the economic devastation and the social and political difficulties reported by the applicant's wife would affect her. Although the report indicates that the minimum wage in Guyana does not provide a decent standard of living for a worker and his or her family, nothing in the record establishes that the applicant and/or his spouse would be limited to minimum wage employment. Additionally, the record fails to establish that the applicant's wife or his children have any medical conditions that would affect their ability to relocate or that the applicant's sons are experiencing behavioral or educational problems. 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)). The AAO also observes that the applicant's wife is a native of Guyana, who spent her formative years there, and the record establishes that her brother resides in Guyana. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Guyana.

The record also fails to establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment. The AAO notes that, as a United States citizen, the applicant's wife is not required to reside outside the United States as a result of denial of the applicant's waiver request. In an affidavit dated June 30, 2006, the applicant's wife states that, if she is separated from the applicant, she and her children would "suffer severe emotional and financial hardships" and "it will be extremely difficult to live the [life] [they] have been accustomed to." The applicant's wife also claims that she cannot afford "babysitting for three children" and she has no family members to help her with the

children. Additionally, she states that she “would have to devote enormous amounts of time in [her] children’s education. The prospect of living [her] life as a single mother terrifies [her].”

Counsel asserts that the applicant and his wife currently “enjoy financial stability.” The AAO notes that the applicant’s wife is employed as a certified nursing assistant and that the applicant is a sales associate for a home supply chain. Counsel states that “[t]he majority of the emotional stress that [the applicant’s wife]...will continue to face as a result of her potential separation from [the applicant] revolves around the difficulties she will be forced to face raising the couple’s children.” Counsel states the applicant “will not make enough money to send back to his wife and children.” The AAO notes that the applicant has failed to provide sufficient documentation to establish his and his wife’s current financial situation, including proof of his wages and the family’s expenses. The AAO also observes that the applicant’s Form G-325A, Biographic Information, dated September 28, 2005, states that he had been unemployed during the preceding five years, indicating that his family has previously relied solely on the applicant’s income. The record also fails to demonstrate, through published country reports, that the applicant will be unable to contribute to his wife’s financial well-being from a location outside the United States. Accordingly, the AAO does not find the record to demonstrate the extent to which the applicant’s removal would affect his family’s finances.

The applicant’s wife also states in her June 30, 2006 affidavit that since the applicant’s waiver application was denied she has not been able to sleep, her “life has been turned upside down,” she is depressed, cannot function properly, and is suffering “constant emotional hardship.” As previously noted, ██████████ in his evaluation of the applicant’s family diagnoses the applicant’s wife with major depressive disorder and generalized anxiety disorder. ██████████ also finds the applicant to be suffering from major depressive disorder and adjustment disorder with mixed anxiety and depressed mood. The applicant’s wife states that her daughter is fully dependent on the applicant since her daughter is not close to her biological father, and all of her children need him. ██████████ notes that “[t]he loss of [the children’s] family structure or the systems that support them would be devastating at this stage of the children’s development.” He, as discussed above, also indicates that the applicant’s wife has been prescribed anti-depressants through her physician and suffers from gastroesophageal reflux disease; that her daughter has been diagnosed with hypothyroidism and is on medication, that her younger son has a heart murmur and that both of her sons have behavioral and educational issues.

As previously indicated, the record fails to include any documentation that would support ██████████ reporting of the applicant’s wife or his children’s health conditions or the behavioral problems being experienced by his sons. 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)). Moreover, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by ██████████ is based solely on one interview with the applicant, his wife, and children. In that the conclusions reached in the submitted assessment are based solely on this single interview of the applicant’s family, the AAO does not find them to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing their value to a determination of extreme hardship. Accordingly, the AAO

does not find the record to demonstrate that the applicant's wife would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 appeal will be dismissed.

ORDER: The appeal is dismissed.