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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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[REDACTED]

FILE: [REDACTED] Office: NEW YORK, NEW YORK

Date:  
**NOV 18 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*  
for

Perry Rhew  
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 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 attempting to seek admission into the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child. 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 and daughter.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 23, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in stating that the economic, medical, and emotional hardships "that the [applicant's wife] faces [do] not rise to extreme hardship." *Form I-290B*, filed May 21, 2009. Additionally, counsel claims that "the separation of the minor child from [the applicant] would further compound the extreme hardship." *Id.* Further, counsel states that the applicant's wife's family ties are in the United States, she is acculturated to the United States, and Guyana is violent. *Id.*

The record includes, but is not limited to, counsel's appeal brief; an affidavit and statement from the applicant's wife; medical and insurance documents for the applicant, his wife, and daughter; tax documents, bank statements, utility bills, and household bills; articles on crime and violence in Guyana; and documents from the applicant's removal proceedings. 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.
- (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 November 27, 2001, the applicant attempted to enter the United States by presenting a counterfeit Guyanese passport and counterfeit Canadian citizenship card in another individual's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. 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. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The

question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to Guyana. In a brief dated June 15, 2009, counsel claims that the applicant’s wife suffers from various medical conditions, including cysts and fibroids, and “[t]he diminished availability of quality medical care in Guyana is also a relevant factor in determining hardship.” Counsel states the applicant’s wife’s parents, who are United States citizens, reside in New York. Additionally, counsel states the applicant’s wife is employed as a nurse and in Guyana, “she will not be making a fraction of what she earns as an R.N. in the U.S.” She states the applicant’s wife’s salary supports the entire family.

Counsel claims that the “[t]he violent country conditions in Guyana where the [applicant’s wife] would have to relocate to keep her family unified is also a relevant factor in determining hardship.” The AAO notes that counsel submitted six articles regarding the increased crime and violence in Guyana.

However, these articles do not establish that the applicant's family would be subjected to any kind of violence. The AAO notes, however, the general safety issues in the articles submitted by counsel.

The AAO acknowledges the claims made by the applicant's spouse regarding the difficulties she would face in relocating to Guyana. The AAO notes that the applicant's wife has been residing in the United States for many years. However, the AAO observes that the applicant's wife is a native of Guyana and the record does not establish that she has no family ties to Guyana. Additionally, the AAO notes that no country conditions materials or documentation has been submitted to establish that the applicant's wife would be unable to obtain employment in Guyana. 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 notes that other than insurance benefit documents and a radiology report for the applicant's wife's acute appendicitis, there is no medical documentation for the applicant's wife's claimed medical issues of fibroids and cysts, and the severity of these problems. *Id.* Additionally, the AAO notes that other than counsel's statement regarding the availability of medical care in Guyana, the record contains no documentary evidence that treatment for the applicant's wife's claimed medical issues is unavailable in Guyana. 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 Obaiqbena*, 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, *supra*. 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.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. In an affidavit dated December 11, 2007, the applicant's wife states "it would be a tremendous hardship for [her] and [their] daughter if [they] were deprived of [the applicant's] presence, based on health reasons, economic reasons, and based on the psychological well-being of [their] daughter." Counsel states that the applicant's wife's "health is precarious. The discovery of cysts and fibroids could complicate her health in the future." The applicant's wife states she is dependent on the applicant "due to the recent discovery of serious health problems," she is receiving ultrasounds, she "may require surgery," and she experiences "frequent abdominal pains and cramps." In a statement dated April 21, 2009, the applicant's wife states she has a history of asthma and her daughter has frequent ear infections. The AAO notes that the record establishes that on August 20, 2007, the applicant's wife was diagnosed with acute appendicitis, and on March 28, 2009, the applicant's daughter was taken to the emergency room for an ear infection. Counsel claims that if the applicant's wife's "medical condition worsen[s]," and "she experiences hemorrhaging, she will not be able to work." The AAO notes the applicant's wife's medical concerns for herself and her daughter.

The applicant's wife states her daughter would suffer psychologically since the applicant is her primary caregiver. The AAO notes the applicant's spouse's concerns for her daughter's emotional health. The applicant's wife states "it would be an economic hardship" if she is separated from the

applicant. She claims that she “could not afford so much for a care-taker while [she] worked, nor would it be healthy for [her] daughter to be raised by a caretaker.” Counsel states the applicant’s wife “has a mortgage,” and “a car payment and other bills.” The AAO notes that the record establishes that the applicant’s wife claimed \$64,508.00 in 2006 and \$56,709.00 in 2007, on her federal tax returns.

The AAO notes that the record includes numerous insurance benefit documents for medical services for the applicant, his wife, and daughter, and the majority of these documents are for routine visits. The AAO acknowledges that the applicant’s wife is suffering from various medical conditions; however, the severity of the applicant’s wife’s medical conditions are unclear, and there is no medical documentation in the record establishing that the applicant’s wife currently suffers from any medical conditions which may result in hemorrhaging and in her inability to work. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici, supra.* The AAO notes that the applicant’s daughter may suffer some hardship in being separated from her father. However, the AAO notes that hardship to the applicant’s daughter is not directly relevant to a determination of extreme hardship in section 212(i) proceedings. The AAO finds the record to include some documentation of the applicant’s and his wife’s expenses; however, this material offers insufficient proof that the applicant’s wife would be unable to support herself in the applicant’s absence. Additionally, the record does not contain documentary evidence that demonstrates the applicant would be unable to obtain employment in Guyana and, thereby, financially assist his wife from outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *Matter of Soffici, supra.* Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains 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(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.