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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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U.S. Citizenship
and Immigration
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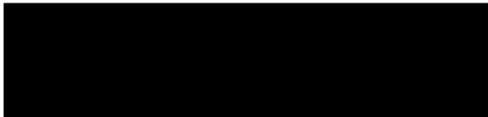
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DATE: APR 27 2012 OFFICE: NEW YORK, NEW YORK FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 \$630. 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,

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 applicant, [REDACTED] is a native and citizen of Trinidad and Tobago. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or material 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 reside in the United States with his U.S. citizen spouse and parents.

On November 5, 2009, the District Director concluded that the applicant failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility but states that the applicant's U.S. citizen spouse will suffer extreme hardship.

In support of the application, the record contains, but is not limited to, a brief from counsel for the applicant, a psychological report regarding the applicant's spouse and other family members, a statement by the applicant's spouse, financial and employment documentation for the applicant's parents, biographical information for the applicant and his spouse, biographical information for the applicant's son, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

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.

The record indicates that the applicant procured admission to the United States on September 28, 1993 at JFK International Airport using a Trinidad and Tobago passport and U.S. B1/B2 visa issued to [REDACTED]. As such, the applicant is inadmissible under INA § 212(a)(6)(C). The applicant does not contest his inadmissibility on appeal.

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.

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. In this case, the record indicates that the applicant has three qualifying relatives, his U.S. citizen spouse, his U.S. citizen father, and his U.S. citizen mother. The AAO notes that counsel for the applicant did not state in the applicant's application for a waiver or on appeal that the applicant's U.S. citizen parents would suffer extreme hardship. Hardship to the applicant or his child is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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). 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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In particular, counsel states that the applicant’s spouse will suffer psychological and financial hardship both if separated from the applicant and if she should relocate with applicant. The record contains a “forensic psychosocial psychiatric social worker evaluation for immigration purposes” by [REDACTED] of New York, New York. [REDACTED] states that he evaluated the applicant’s spouse, child, stepchild, and parents on November 18, 2009 for an unstated period of time. Although the report contains “statements” from the individuals evaluated, those statements are not signed by the named individuals and are included in the text of the evaluator’s report. As such, those statements have limited authority. Additionally, the report comments on various issues, such as the physical health of the applicant’s parents and the country conditions in Trinidad and Tobago, that are not supported by other documentary evidence in the record. The AAO notes that although the assertions of the evaluator are relevant and have been taken into consideration, little weight can be afforded to the statements that are beyond the scope of expertise of the evaluator and lack supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)).

In regards to the hardship that the applicant's spouse would suffer if she were to be separated from the applicant, the applicant's spouse states that she relies on her husband for financial support and also to help her care for her children. In her statement, she says that she would not want to raise her youngest son without his father, the applicant. She states that she had her eldest son at a young age in a previous relationship in her native Trinidad and Tobago and that she had to raise him without the support of his father. That son is now 26 years old. Although, the AAO recognizes the significance of separation on families, and the applicant's spouse's concern for raising her son without his father, the evidence does not indicate that the hardship in this case would rise beyond that is normally experienced by families separated due to immigration inadmissibility. The AAO also recognizes that the evaluator concluded based on his one interview with the applicant's spouse that she has at some point in her life suffered from Posttraumatic Stress Disorder (PTSD), Major Depressive Disorder, Clinical Anxiety, and "suicidality." The report, however, also indicates that the applicant's spouse "has greatly benefited from psychotherapy with a counselor in Long Island." Although the evaluator concludes that the applicant's spouse would be "devastated" in the applicant's absence, the type of hardship described by the evaluator, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and, even when considered in the aggregate with the financial hardship in this case, does not rise to the level of extreme hardship.

In regards to the financial hardship that the applicant's spouse would suffer if she were no longer able to rely on the applicant's income, the record indicates that the applicant, using an alias [REDACTED] reported to the Internal Revenue Service that he was single and earned \$37,772.00 in 2007. The record indicates that the applicant has used [REDACTED] identity throughout the period of time that he has remained unlawfully in the United States for various purposes, including employment and property ownership, which makes it difficult to evaluate the applicability of the documents submitted. The applicant's spouse reported to the Internal Revenue Service that she was "head of household" and earned \$15,080 in 2008. The applicant and his spouse have been married since June 3, 2006. It appears from the record that for tax purposes the applicant's spouse states that she does not rely on her husband's income, but for the purposes of this application, she states that she does. Moreover, the affidavit of support submitted by the applicant's spouse on his behalf indicates that applicant's spouse had a balance of \$40,000 in savings and checking accounts. The record does not make clear the applicant's spouse's total expenses, but the AAO takes note that the applicant's spouse has one minor U.S. citizen child, a son who is 10 years old. According to the 2012 Health and Human Services Poverty Guidelines, the poverty threshold for a family of 2 is \$15,130. Although the applicant's spouse's income from her work as a nanny as reported on her 2008 tax returns puts her just above the poverty level, evidence in the record indicates that the applicant's spouse has substantial savings. Additionally, it is not clear from the record whether the applicant's spouse presently works full-time and if she does not, why she would be unable to do so. Considering the evidence of record cumulatively, the emotional and

financial hardship to the applicant's spouse if she were to be separated from the applicant does not rise to the level of extreme.

The applicant's spouse states that she would not return to her native Trinidad and Tobago if the applicant must return there, "mostly out of consideration for our youngest son." The applicant's spouse states that she does not want her son to experience the same limitations in regards to health care and education that she did when she was growing up in Trinidad and Tobago. Although the applicant's spouse states that her son suffers from allergies, no documentation has been submitted to support that statement and no explanation is given for why the applicant's son could not be treated for his allergies in Trinidad and Tobago. Counsel for the applicant also states that the applicant's spouse would suffer financial hardship if she were to relocate to Trinidad and Tobago, a statement that is also included in the "forensic psychosocial psychiatric social worker" evaluation. The statements of the applicant's spouse, counsel, and of the mental health evaluator regarding the economic and social conditions in Trinidad and Tobago are not supported with any evidence. In fact, no independent documentation has been submitted regarding the country conditions in Trinidad and Tobago. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, there is no indication in the record why the mental health evaluator has expertise regarding the country conditions of Trinidad and Tobago. Although the applicant's spouse states that her expertise comes from her visits to her native country, her assertions regarding the availability of employment, education, and health care in that country are of little persuasive value without supporting evidence. The applicant's spouse has not indicated the last time she visited Trinidad and Tobago and what experiences she had there in regards to her stated concerns. As such, there is not sufficient evidence in the record to illustrate that the hardship that the applicant's spouse would suffer if she were to relocate to Trinidad and Tobago would be extreme.

The applicant's parents are also U.S. citizens and although counsel has not presented them as qualifying relatives in this case, the AAO has considered the evidence in the record to the extent that it indicates that either of the applicant's parents would suffer hardship in his absence. Although, the evaluation by [REDACTED] in the record indicates that the applicant's father suffers from a heart condition and that both of the applicant's parents suffer from diabetes, no supporting documentation was submitted from a medical professional to support that assertion. The record indicates that the applicant's father who previously earned over \$80,000 per year as an engineer for a construction company did not earn any income in 2009. The record, however, indicates that he and his wife obtained social security benefits in the amount of \$22, 986 and had assets totaling \$270.00. The record does not indicate that the applicant's parents would suffer financial hardship in the applicant's absence and any physical hardship that they would suffer as a result of his absence and inability to assist them is not supported by documentary evidence in the record. The applicant did not provide any evidence to indicate why either of his parents would suffer extreme hardship if they were to relocate to Trinidad and Tobago. As a result, the AAO does not find that the record supports a finding of extreme hardship to either of the applicant's U.S. citizen parents.

In this case, the record does not contain sufficient evidence to show that the hardships faced by any of the qualifying relatives 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 his qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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. 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.