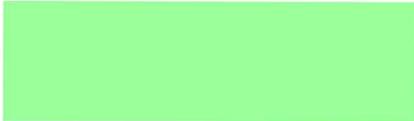




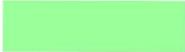
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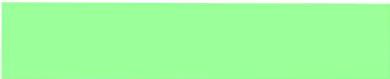
(b)(6)



DATE: FEB 28 2013

Office: ST. PAUL, MN

FILE: 

IN RE: 

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:

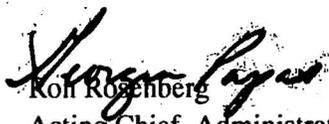


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a legal permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative. He 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 spouse and daughter.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated April 26, 2012.

On appeal, counsel asserts that the director failed to properly weigh the hardship evidence. *See Form I-290B, Notice of Appeal or Motion*, dated May 11, 2012.

The evidence of record includes, but is not limited to: counsel's briefs; statements from the applicant's spouse, family members, friend, and priest; medical evidence for the applicant and his spouse; identification and relationship documents; articles about country conditions in Guyana and medical conditions; and financial documents. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

- (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 on in 1994, the applicant entered the United States with a fraudulent Trinidad and Tobago passport issued to [REDACTED]. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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 is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 record contains references to hardship the applicant's daughter, son-in-law, and grandchildren would experience if the waiver application were denied. It is noted that Congress did not include hardships to an alien's children, in-laws, and grandchildren as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardships to the applicant's daughter, son-in-law, and grandchildren will not be separately considered, except as they may affect the applicant's spouse.

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).

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.*

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.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant’s spouse has been in the United States for 16 years and if she were to relocate to Guyana, she would have to leave her family and support network, which would cause her extreme emotional hardship. Their daughter and her family live in the United States. Their son and his family, who live in Guyana, plan to move to the United States this year, according to counsel. Moreover, counsel asserts that the applicant’s spouse would suffer “a severe drop in quality of life” and “a catastrophic financial blow” if she relocates. Counsel states that the applicant’s spouse would have difficulty finding employment because of her age and education level. Counsel also raises concerns about the lack of medical care in Guyana, because the applicant’s spouse “requires a continuous treatment plan” to manage her depression and “needs regular medical care” for her high cholesterol and past hand injury.

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Counsel states that separation from the applicant also would cause extreme hardship to the applicant's spouse, because he provides transportation for her and comforts her in "stressful situations." According to counsel, the applicant's spouse's depression would worsen to such an extent if she were separated from the applicant that her emotional hardship would be extreme. Counsel also states that the applicant's spouse's concerns for the applicant's health in Guyana will cause her extreme hardship. Counsel asserts that the applicant would not be able to afford the care he needs in Guyana because he alone would support his household. Counsel further states that unsanitary conditions, such as a contaminated water supply and potential exposure to bacterial or parasitic infections in Guyana would amount to extreme hardship for the applicant and his spouse, given their health conditions.

The applicant's spouse states that without the applicant, their family would suffer "emotionally as well as physically" and she would "grieve for not having" him with her. The applicant does not work and drives her to work in the mornings because she cannot drive and no public transportation is available. He also manages their bills and household chores. She states that she has limited use of her hand and needs the applicant "at all times to survive." Medical evidence indicates that the applicant's spouse was injured on October 8, 1997 and received worker's compensation as a result. A doctor determined that she could return to work on April 6, 1998, with a restriction on the amount of weight she could lift with her right hand. A June 26, 1997 letter from [REDACTED], a rehabilitation nurse consultant, indicates that the applicant's spouse resumed her full hours at her employment and was "tolerating her work activities well."

With respect to hardship she would experience if she relocated, the applicant's spouse states that she would have no means of financial support and nowhere to live in Guyana. Moreover, she states that in Guyana, she has an allergic skin reaction with an unknown cause that doctors cannot treat. She is concerned that she and the applicant would not receive adequate medical care because Guyana is a "third world country." She also fears "physical harm, racial tension and the poor living conditions in Guyana" and describes these as reasons for moving to the United States.

The applicant's daughter and son-in-law state the applicant plays an important role in their lives by helping care for their children and preparing meals. They and their children would experience emotional hardship if the applicant were removed. The applicant's daughter states that her mother would "struggle" being separated from the applicant and she would have to "work harder, spending less time" with her family to support her parents, because they have "no financial support or security" in Guyana.

The record contains two brief letters from Dr. [REDACTED] both dated July 19, 2011: one for the applicant and the other for the applicant's spouse. Dr. [REDACTED] letters are almost identical in content and language. He saw the applicant and his spouse "for treatment of depression," they were "under significant stress," and they have "not been doing well lately." Dr. [REDACTED] states that he initiated "appropriate treatment" for both; they need to be monitored "pretty closely for the next several months" and over "an extended period of time with intermittent monitoring."

Dr. [REDACTED] states that once the applicant and his spouse improve, stopping the treatment "will cause a relapse."

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse should she remain in the United States. The AAO acknowledges that the applicant and his spouse have a loving relationship and that she would experience emotional hardship if they were separated; however, we note such hardship is a common result of deportation or exclusion and is insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Moreover, the AAO finds the doctor's letters concerning the applicant's and his spouse's depression and their treatments vague. Dr. [REDACTED] does not describe the severity of their depression nor does he specify the treatment they require. The applicant also fails to submit evidence demonstrating the effectiveness of the treatment he and his spouse received and whether they continue to experience depression. Furthermore, no evidence in the record explains how the applicant's and his spouse's mental conditions affect their daily living or their employability. With respect to hardships the applicant's daughter, son-in-law, and grandchildren experience, the applicant fails to explain how their emotional hardship affects his spouse, the only qualifying relative in the instant case.

Moreover, medical evidence concerning the applicant's spouse's hand injury is approximately 14 years old. The record contains no documentary evidence supporting the applicant's spouse's claim that she currently is physically limited in the use of her hand.

Furthermore, the applicant has failed to submit evidence corroborating his spouse's financial hardship claims. The record contains no information concerning their household income and expenses. Moreover, the record indicates that the applicant does not work and the applicant fails to explain how his absence would cause his spouse financial hardship. Absent supporting documentation, the applicant's spouse's assertion is insufficient proof of hardship. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See 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). Therefore, the AAO concludes that the evidence in the record, considered in the aggregate, does not establish the hardship the applicant's spouse would experience, should she separate from the applicant, would rise to the level of extreme.

The AAO finds that the applicant also has failed to demonstrate that his spouse would experience extreme hardship if she relocates to Guyana. The AAO notes the applicant's spouse is from Guyana. Though the AAO finds country-conditions evidence informative, it does not, in and of itself, establish extreme hardship, and the record contains no other evidence to demonstrate that the applicant's spouse would face danger in Guyana or would be unable to find employment and receive adequate health care there. The applicant also submits no evidence corroborating his spouse's claims of an untreatable allergy that she experienced in Guyana. Moreover, their son and his family live in Guyana, and the applicant does not corroborate his assertion that their son will move to the United States and, therefore he and his spouse would have no family in Guyana to assist them. The AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should she relocate, would not rise to the level of extreme.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is 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. 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.