



U.S. Citizenship
and Immigration
Services

H-2

[Redacted]

FILE: [Redacted]

Office: CLEVELAND, OH

Date: AUG 04 2004

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Lebanon 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 a visa and admission into the United States by fraud or willful misrepresentation on July 24, 1996. The applicant married a citizen of the United States in December 1996 and is the beneficiary of an approved Petition for Alien Relative. 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 spouse.

The district director concluded 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 March 21, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated October 22, 2002.

On motion to reopen and reconsider, counsel asserts that there are changed facts in the application including changed conditions in Lebanon, further family ties in the United States and developments in the health of the applicant's spouse and child. *Form I-290B*, dated November 21, 2002.

In support of these assertions, counsel submits a brief; letters of support; reports addressing country conditions in Lebanon; copies of psychiatric evaluations for the applicant's spouse and a letter from the applicant's spouse, dated May 8, 2002. The entire record was considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

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.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

An overseas investigation into the applicant's application for a visitor visa in 1996 revealed that the applicant had applied for and received a nonimmigrant visa representing himself to be married to [REDACTED] who was expecting a child. He also claimed to be an employee of the CAT Company. In reality, the applicant was not married and was not employed by the CAT Company.

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 alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

Counsel asserts that the applicant's spouse will suffer extreme hardship if she relocates to Lebanon in order to remain with the applicant. Counsel states that the applicant's wife has extensive family ties in the United States including one United States citizen child. Counsel contends that the applicant's wife has no family ties outside of the United States. *Brief in Support of Motion to Reopen Matter of Ferjallah Mouhawesse*, A74 736 883 on October 22, 2002 Decision of the Office of Administrative Appeals on Application for Waive of Grounds of Inadmissibility Under § 212(i) of the Immigration and Nationality Act. Counsel further asserts that living conditions in Lebanon are adverse to the applicant's wife and daughter. Counsel cites discrimination against women and Christians and states that as the applicant's wife does not speak Arabic and

has no familiarity with the customs of Lebanon, she would have difficulty obtaining employment and finding appropriate educational opportunities for their daughter. *Id.* Counsel also contends that mental health treatment in Lebanon is not as advanced as it is in the United States and the applicant's spouse would suffer if she was unable to receive treatment for her panic attacks. *Id.*

Counsel does not establish hardship to the applicant's spouse if she remains in the United States maintaining proximity to her family, access to adequate mental health care, protection of her civil rights and availability of educational opportunity for her child. The record establishes that the applicant's wife has a long history of suffering from panic attacks and obsessive compulsive disorder. However, the record also demonstrates that the applicant's wife has experienced long periods of time when she is free of such attacks and is able to function and maintain employment. *Intake Evaluation*, dated April 23, 1998 ("[S]he said that she has not had any panic attacks for several years." and "She ... misses the full-time job that she had prior to her child.") A recent evaluation indicates that the applicant's spouse experienced a resurgence of panic attacks, a loss of appetite and fatigue as well as loss of motivation and withdrawal associated with stress. *Intake Evaluation*, dated April 4, 2002. This evaluation also indicates that the applicant's spouse experiences alleviation of her symptoms as a result of medication and recommends psychotherapy to further treat the condition. *Id.* The record fails to establish that the applicant's spouse has an ongoing relationship with a mental health professional or consistently treats her symptoms in an effort to alleviate them. *Psychiatric Consultation*, dated September 30, 1998 (The applicant's wife "did not follow through with recommendations for treatment.") Further, the record fails to establish that the applicant's spouse is unable to maintain employment in order to financially provide for herself and her daughter in the absence of the applicant.

U.S. court 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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) 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 previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of October 22, 2002 dismissing the appeal is affirmed.