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U.S. Citizenship and Immigration Services

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FILE: Office: NEWARK, NJ Date: JAN 21 2004

IN RE:

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:

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

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

The applicant is a native and citizen of Ukraine 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 into the United States by fraud or willful misrepresentation on November 11, 1996. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her U.S. citizen husband and child.

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. *See* Decision of the District Director, dated November 18, 2002.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services] failed to address the proper legal standard as enunciated by the Board of Immigration Appeals (BIA); failed to address the factors established by the BIA, which were addressed in the original application and supplemental materials; failed to address the specific facts in the application in any manner and abused its discretion for the foregoing reasons and on the facts and the law as a whole.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, dated January 15, 2003; a copy of a consular information sheet for Ukraine and a brief in support of the applicant's appeal. The record also contains copies of country reports for Ukraine; an affidavit of the applicant and the applicant's spouse, undated; a letter from the physician treating the mother of the applicant's spouse; a copy of the visa belonging to the applicant's sister; a copy and translation of the Ukrainian birth certificate of the applicant; a copy of the Ukrainian passport issued to the applicant; a copy of the U.S. passport issued to the applicant's spouse and a copy of the marriage license and certificate for the couple. 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:

> (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.

The record demonstrates that, in October 1996, the applicant was denied a visitor visa by a consular officer. On November 11, 1996, the applicant entered the United States using a passport and visa belonging to her twin sister. The applicant claims that she intended to remain in the United States for one year to assist her sister in caring for her sister's child and mother-in-law, but after meeting her spouse, the applicant decided to remain in the United States.

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 herself 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 husband. 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, 565-566 (BIA 1999) provides a list of factors the 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 contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as the applicant's spouse has lived his entire life in the United States; his entire family resides in the United States; he only speaks English; he has an established, lucrative career in the United States and he would be unable to secure comparable employment in Ukraine. *See* Brief in Support of Applicant's Appeal, dated January 15, 2003. The AAO notes that the inferences of the applicant's spouse regarding the structure and pay scale of retail automotive sales in Ukraine alone do not establish the inability of the applicant's spouse to obtain employment in Ukraine. *Id.* at 13-14 (relating the experience of friends of the applicant in attempting to purchase a car in Ukraine). However, counsel's assertions regarding the language barrier posed by employment in Ukraine and the extensive work history in American journalism possessed by the applicant's spouse are compelling.

On the other hand, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States thereby maintaining his close familial relationships, productive career, and weekly tennis match. The AAO notes that as U.S. citizens, the applicant's spouse and child are not required to leave the United States as a result of the adjudication of the applicant's waiver.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record does not establish that the applicant is the only person who can provide care to the couple's child and the mother of the applicant's husband.

Counsel asserts that the couple's child speaks only English and therefore should remain in the United States. Counsel cites *Matter of Kao*, 23 I&N Dec. 45, Int. Dec. #3446 (BIA 2001), in support of the proposition that relocation to Ukraine would impose extreme hardship on the child. The AAO notes that the applicant's child is not a qualifying relative for purposes of waiver proceedings under section 212(i) of the Act. Further, the applicant's child is four years old and has not yet commenced formal education rendering the situation distinguishable from the one presented in *Matter of Kao* where the applicants' 15-year-old daughter was not

sufficiently fluent in the Chinese language to make an adequate transition to daily life in her parents' native country of Taiwan. Counsel also contends that the couple's child has never been apart from his mother. The need to place a child, who is not a qualifying relative under section 212(i), with a care provider other than his mother does not rise to the level of extreme hardship under the circumstances presented in this application.

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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding 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 she 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.