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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: ATHENS

Date: NOV 01 2004

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(g) and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g) and § 1182(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Officer in Charge (OIC) Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ethiopia who was found to be inadmissible to the United States by a consular officer under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(i), as an alien who is determined to have a communicable disease of public health significance. In addition, the applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having an imposter appear for a medical examination on two separate occasions during 2002 in order that the applicant would appear to test negative for the human immunodeficiency virus (HIV) in connection with his visa application. The applicant is the beneficiary of an approved preference visa petition based on his marriage to a United States citizen in March 1996 in Greece. The applicant seeks a waiver of the bar of admission provided under sections 212(g) and (i) of the Act, 8 U.S.C. § 1182(g), in order to join his spouse and child in the United States.

The OIC denied the application after determining the applicant failed to establish his eligibility for a waiver because he had not demonstrated that his exclusion would result in extreme hardship to his U.S. citizen spouse or child.¹ The following is a discussion of the evidence submitted in support of each waiver sought, and a review of the arguments offered by counsel on appeal.²

Section 212(a)(1)(A)(i) of the Act provides that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, is inadmissible.

HIV has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. § 34.2(b)(4). Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

Section 212(g)(1) of the Act provides, in part, that the Attorney General may waive such inadmissibility in the case of an individual alien who:

(A) is a spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney

¹ The record reflects that although the applicant was seeking waivers both under 212(g) and 212(i), the OIC's decision appears to only address the applicant's eligibility for the 212(i) waiver. It is possible that the OIC determined that because the applicant had not satisfied the requirements for the 212(i) waiver that no purpose would be served in addressing his eligibility for the 212(g) waiver. The AAO will, nonetheless, review the applicant's eligibility under both waivers pursuant to our *de novo* authority. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

² Although this decision will reference the arguments made by counsel in support of the appeal, we note that counsel is no longer representing the applicant in this matter.

General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human services, may by regulation prescribe.

An applicant who meets this statutory requirement must also demonstrate that the following three conditions will be met if a waiver is granted:

- (1) The danger to the public health of the United States created by the alien's admission is minimal; and
- (2) The possibility of the spread of the infection created by the applicant's admission is minimal; and
- (3) There will be no cost incurred by any government agency without prior consent of that agency.

In this case, the applicant's medical examination shows he had tested positive for HIV infection, and that the results of the serological examination for HIV were confirmed by Western blot. In support of his request for a section 212(g) waiver, the applicant has submitted a letter dated December 18, 2002, addressing issues relating to both of the requested waivers. In the letter the applicant states that despite his HIV positive status he is not a threat to anyone and would not become dependent upon anyone else. He also states that he has not transmitted the virus to his wife or son, and has no intention to infect anyone and will seek to protect others from experiencing a similar problem. He further asserts that he is experiencing no medical problems and is working to help himself. *See Statement of Applicant*, dated December 18, 2002.

In addition to the applicant's statement, the record reflects that the applicant was interviewed on February 2, 2000, in Athens, Greece in connection with the waiver applications. The applicant explained the circumstances surrounding his request to have a friend take the medical examination for him on two separate occasions. He believed he would succeed in the deception, as he had never fully accepted that he was HIV positive and had hoped that the subsequent test results would prove negative. The applicant further indicated that he had not had medical treatment after his diagnosis. The brief submitted by counsel, likewise asserts that the applicant's medical condition does not require any hospitalization or drugs to be taken on a regular basis. Counsel's brief states that the applicant's physician "currently recommends proper diet, exercise and a multi-vitamin." *Counsel's Brief*, dated January 30, 2004.

The applicant has also submitted documentation to support a finding that any medical expenses would be covered by private medical insurance. Specifically, he has submitted a letter dated June 16, 2003, from Misty King, identified as a Member Service Specialist, of Regence BlueShield of Yakima Washington, to Alem G. Haile, the applicant's spouse. The letter is a response to an inquiry by the spouse regarding eligibility for insurance coverage. The letter goes on to state that "[o]ur records show that Mikael's coverage became effective on 5/01/2003 and is active."

While the applicant's statement and the correspondence to the applicant's wife, do speak to the issues of the danger the applicant may pose to the community and the ability of the applicant to address his medical needs without cost to the government, the evidence is deficient in several significant respects. First, although the

applicant indicates that he would endeavor to protect others from HIV, and believes his status as a married man would minimize any risk, the record does not contain any statement from the applicant's physician as to the applicant's current medical condition and how he is managing his illness. In fact, it appears from the information contained in counsel's brief, that the applicant is receiving no medical treatment specifically for his condition. While it may be the case that the diet, exercise, and vitamin regimen is a course of treatment prescribed by his physician, the record contains no statement from any physician at all. The lack of such evidence causes this office to believe that it is possible that the applicant has not sought treatment for his condition, or has declined recommended treatment.³ The AAO does not believe that the applicant has been able to establish that he fully understands the nature of his condition and the measures available to him to preserve his health and prevent further transmission, without some evidence from a treating physician indicating the manner in which the illness is being managed.

Second, we find the evidence submitted as to the applicant's health insurance coverage to be vague and ambiguous. The only evidence in the record on that issue is the previously described letter from Regency BlueShield to the applicant's spouse. The letter indicates that an individual name [REDACTED] has coverage which became effective on May 1, 2003. There are a couple of problems with the letter as evidence of the applicant's coverage. The letter identifies the covered individual as [REDACTED]. All of the documents, including the Petition for Alien Relative (Form I-130) and the applicant and spouse's own statements contained in the record identify the applicant as [REDACTED]. While the difference may appear to be minor, and attributable to an error by the insurance company, it appears unusual that the non-English spelling of the name would appear in the correspondence of the insurance company and not in the documents executed by the applicant and his spouse. It would stand to reason that the applicant and his spouse would have sought the insurance coverage in the same name as the name which the applicant has consistently used in official correspondence. It is questionable whether the spouse would suddenly have used a different name in the documents submitted to the insurance company. Moreover, the insurance company's correspondence does not identify the applicant in any other more specific manner, such as noting the applicant's date of birth, or noting his status as the spouse of the insured. We note that other documents in the record have referenced a minor child of the couple, yet those documents do not identify him by name. While it is possible that the insurance letter relates to the applicant, without more specific identifying information the possibility exists that the correspondence addresses the insurance coverage of the couple's child who may be named for his father, but with a different spelling.

Aside from the issue of the actual identify of the insured, the documents submitted do not conclusively establish that the applicant is, in fact, covered for his HIV status. A more probative letter from the insurer would have been a letter that more specifically identified the applicant and confirmed that he is covered under the medical plan, with a specific notation that the insurance carrier has no coverage limitations as to the nature or origin of disease or medical conditions, including HIV status. Without such a definitive statement, the evidence merely indicates that the applicant has some medical coverage, but the extent of that coverage in relation to his current medical condition is unknown. Given the record of the previous attempts at deception in the course of seeking admission to the United States, CIS is justified in requiring unambiguous evidence.

Accordingly, it is concluded that the applicant has not met the three conditions listed previously in regard to the section 212(g) waiver. As a result, the application for waiver of grounds of inadmissibility under section

³ This concern is increased by the fact that the applicant indicated during his interview that he had not fully come to accept his diagnosis.

212(a)(1)(A)(i) of the Act cannot be granted. The decision of the OIC to deny the waiver application will be affirmed.

We turn next to the applicant's eligibility for a section 212(i) waiver. 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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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 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 spouse. 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 Board 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.

The evidence in the record in support of this waiver consists of the statements of the applicant and his wife. No other documents have been submitted on this issue.⁴ The applicant expresses remorse for his actions in having an imposter submit to the medical examination in his place and explains that his motivation for doing so was based upon his strong desire to join his family in the United States. However, these issues, while they may reflect favorably on any discretionary aspect of the decision, do not address the issue of extreme hardship. On that issue, the applicant asserts in his statement that his family members, including his wife and son are suffering and urges that the waiver be granted in order to reduce the pain to his family. These statements, while likely sincere, are very general and do not address the key issue of demonstrating how the failure to grant the requested waiver would result in extreme hardship to his qualifying family members. See *Statement of Michael Daniel Kidane-Marion*, dated December 18, 2002.

Turning next to the statement of the applicant's spouse, she indicates that had it not been for the support of family and friends, she would have developed mental problems. The statement lists a series of difficulties experienced to include, "loneliness, frustration, anger, hopelessness, poverty, physical fatigue, and emotional distress. See *Statement of Alem Haile Gebremedhin*, dated January 31, 2003. While the spouse asserts that she has suffered extreme hardship as a result of being a single parent and not having her husband with the family, little is offered in terms of the specific hardships encountered. We note that the record reflects that the spouse is employed by Northhaven, Inc and that this company apparently supplies the spouse with health insurance. See *Form G-325 for Alem Haile Gebremedhin* and *Letter from Regency BlueShield*, dated June 16, 2003. While the spouse suggests that the applicant's absence has negatively affected their child's learning, no objective evidence has been offered as to the degree of those difficulties, if any, and their cause. The spouse also indicates that she has been unable to obtain a better job due to her inability to pursue educational opportunities. She also states that it is not possible for her to join her husband in Greece due to the difficulties in being able to obtain residency, and the fact that she would be required to give up her U.S. citizenship.

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

⁴ Although the record also contains a letter dated July 23, 2003 from applicant's church in Greece, that letter principally addresses the discretionary factors relating to the applicant's participation in his religious community. It does not, however, address the statutory requirement of demonstrating how the applicant's inability to live with his wife and child in the United States would impose extreme hardship on those qualifying family members.

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 spouse will endure hardship as a result of separation from the applicant. However, it appears that the family unit is experiencing the normal results of separation, and that the resulting hardship does not rise to the level of extreme hardship. We further note that the spouse has a strong and supportive network of family and friends that has assisted the applicant through this difficult period and presumably will continue to offer their support.

A review of the documentation in the record fails to establish the existence of extreme hardship to the 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 a waiver of grounds of inadmissibility under sections 212(g) and (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.