



U.S. Citizenship
and Immigration
Services

HR

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date:

IN RE:

[REDACTED]

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:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native of Iran and citizen of New Zealand who was found 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 by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen. 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 acting 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 Acting District Director*, dated June 17, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) did not weigh the dysthymia suffered by the applicant's spouse in evaluating hardship presented in the application. Counsel further states that the applicant's spouse is expecting a child, the couple owns a home and the applicant is the stepfather of his spouse's two United States citizen children. *Form I-290B*, dated July 15, 2003.

In support of these assertions, counsel submits several articles describing dysthymic disorder and a copy of the deed for property owned by the applicant and his spouse. The record also contains an affidavit of the applicant's spouse, dated October 10, 2001; a copy of the marriage certificate of the applicant and his spouse; a psychological evaluation of the applicant's spouse, dated September 28, 2001; letters of support; color copies of photographs of the applicant and his spouse with other family members and copies of financial and tax documents for the applicant and his spouse. The entire record was considered in rendering this decision.

Counsel requested an extension of 45 days in which to submit a brief and additional documentation in support of the appeal. The AAO notes that over one year has elapsed since the filing of the appeal and no additional documentation has been received into the record. A decision, therefore, will be rendered based on the record as it currently stands.

The record reflects that the applicant obtained admission to the United States with a visitor visa when he was, in fact, an intending immigrant. On July 25, 2001, the applicant admitted to immigration officials that he procured admission to the United States by fraud or willful misrepresentation.

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.

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 (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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's spouse would suffer extreme hardship if she relocated to New Zealand in order to remain with the applicant. Counsel states that the applicant's spouse is a native of the United States and shares custody of two children with her former spouse. *Letter from Terry Johnston, PhD*, dated September 28, 2001. Counsel asserts that the applicant's spouse could not obtain work in her chosen field in New Zealand. *Declaration of Samantha Harvie in Support of Application for a Waiver of Grounds of Excludability for Omid Azimzadeh (A78 461 739)*, dated October 10, 2001 ("Nor could I find the kind of work I have trained for in New Zealand, which does not have an [sic] developed bio-technology industry like California").

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States maintaining proximity to her family and employment in her chosen profession. The record establishes that the applicant's spouse suffers from dysthymia. *Letter from Terry Johnston, PhD*. According to counsel, individuals who suffer from dysthymic disorder have a ten percent likelihood of suffering a major depression with the consequent risk of suicidal behavior. *Letter from Byron Park*, dated July 12, 2003. Although the record includes a psychological evaluation for the applicant's spouse, the record does not evidence an ongoing relationship between the applicant's spouse and a mental health professional. Counsel indicates that the applicant's spouse is prescribed medication to combat her symptoms and stabilize her medical condition.

Form I-290B, dated July 15, 2003 (stating that the applicant's spouse has been prescribed Venlafaxine, Effexor and Paxil during different periods). The record, however, does not demonstrate whether or not the prescribed medications serve to alleviate the symptoms suffered by the applicant's spouse. The submitted psychological evaluation indicates that the applicant provides his spouse with structure and as the applicant does not approve of drug or alcohol use, he leads his spouse to live a healthier life. *Letter from Terry Johnston, PhD*. The AAO recognizes the positive influence that the applicant may have on his spouse, however the record does not establish that the applicant is the only person able to provide structure and support to the applicant's spouse and the record fails to demonstrate that the applicant's spouse was unable to function prior to the introduction of the applicant into her life, as implied by counsel. To the contrary, the record demonstrates that the applicant's spouse has suffered from dysthymia for the majority of her life, yet succeeded in maintaining employment and raising her children despite her condition. *Id.*

The record demonstrates that the applicant's spouse works and is able to provide for herself financially. Counsel asserts that the applicant's spouse would be unable to afford payments on their current home in the absence of the applicant. *Form I-290B*. The AAO acknowledges that the applicant's spouse may experience hardship as a result of a change in her living situation; however, such a change does not sufficiently form the basis for a finding of extreme hardship. 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.

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 spouse will likely 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(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.