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U.S. Citizenship
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HA
APR 20 2005

[Redacted]

FILE: [Redacted]

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Algeria who procured admission into the United States on June 13, 1997, by presenting a fraudulent French passport. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen wife and denied the application accordingly. On appeal, counsel asserts that the applicant's wife will experience extreme emotional and financial hardship whether she accompanies the applicant to Algeria or remains in the United States. Counsel submits, amongst other documentation, letters written by the applicant and his wife, medical documents showing that the applicant's wife attempted suicide in 1998 and was treated for depression in 2003, and country conditions information about Algeria.

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 may, in the discretion of the Attorney General, 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 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.
- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. [REDACTED] and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 [REDACTED] Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, § 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly “[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act.”

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

- (a) [I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . See 18 U.S.C. § 1546.

In this case, the applicant knowingly obtained a fraudulent French passport in an assumed name and used the document to procure admission into the United States in violation of § 212(a)(6)(C). Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez*, *supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In this case, the applicant’s qualifying relative is his U.S. citizen spouse. Counsel asserts that the applicant’s wife cannot relocate to Algeria, because she would face intense societal negativity and danger on account of her U.S. citizenship and Christian religion. Counsel also alleges that the applicant’s wife would be a target of hostility simply for being a woman. In support of this position, counsel submits a U.S. Department of State Report on Human Rights Practices in Algeria for 2002. The evidence on the record shows that the applicant’s wife might run an increased risk of hostility and violence in Algeria due to her religion and citizenship; nevertheless, the applicant’s wife is not required to relocate to Algeria.

The applicant has failed to establish that if his wife remains in the United States, she would suffer extreme hardship. Regarding the applicant’s wife’s health, the record contains a letter from [REDACTED] M.D. dated September 25, 2003. Dr. [REDACTED] wrote that the applicant’s wife was under treatment for depression, anxiety, and panic attacks, and he indicated that the medication she was taking provided some relief. Dr. [REDACTED] also wrote that the applicant was not experiencing suicidal ideation at that time. The record contains

medical information relating to the applicant's wife's 1998 hospitalization for a suicide attempt. According to the recent evidence previously discussed, however, she is not at risk of harming herself or others, and there is no indication that she is unable to work or care for herself or her children.

Counsel maintains that the applicant fled Algeria in fear for his life. The record contains no information with respect to this claim, nor does the applicant describe his reasons for leaving Algeria. The applicant did not apply for asylum. The AAO has no information upon which to base a conclusion regarding the applicant's personal safety in Algeria. As found in the record, the evidence does not establish that the applicant is at greater risk of harm than the general population in Algeria; therefore, the AAO cannot concur with counsel's assertion that the applicant's level of risk of harm would cause his wife extreme emotional suffering.

The country conditions information on the record speaks of Algeria's civil unrest and ethnic and religious strife, but it does not establish that the applicant would be unable to obtain employment or provide financial assistance to his family while he is in Algeria. The record also does not establish that the applicant's wife is unable to make financial and lifestyle adjustments or that she has no other source of income aside from the applicant's employment.

In *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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 U.S. Supreme Court additionally 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, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 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.