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FILE:



Office: MIAMI DISTRICT OFFICE

Date:

AUG 15 2005

IN RE:



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:



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, Miami District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to adjust his status to permanent resident and remain in the United States with his U.S. citizen 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 November 20, 2000.

On appeal, counsel contends that the applicant was erroneously found inadmissible to the United States, as he did not enter with fraudulent documents. *Brief in Support of Appeal*, p.1-2, received December 19, 2000. Counsel asserts that the applicant's U.S. citizen spouse is now pregnant, and she will suffer extreme hardship if the applicant is compelled to leave the United States. *Id.* at 2.

The record contains a copy of the marriage certificate of the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse; copies of financial and tax documents for the applicant's spouse, and; a letter from counsel regarding the applicant's eligibility for relief under section 245(i) of the Act. The entire record was reviewed and 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 reflects that the applicant procured admission into the United States by presenting a fraudulent passport and making a willful misrepresentation of a material fact. Specifically, the applicant affixed his photograph into a passport issued to another individual in order to claim the identity of that person. Accordingly, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel for the applicant asserts that the applicant's actions do not constitute entry with fraudulent documents, as the photograph used was a valid image of the applicant, and the visa contained in the passport was properly issued by a U.S. consulate. However, the state of the passport when presented to U.S. immigration officials was clearly fraudulent, as the applicant had deliberately altered the document in order to conceal the identity of the individual to whom it was issued, and to falsely claim that that applicant had been issued a visa for entry into the United States. Counsel's characterization of the applicant's actions as a "photo switch," and implication that such actions fall outside of the definition of fraud, is not persuasive. The applicant's true identity was material to whether he was eligible for admission to the United States. By willfully misrepresenting his identity to immigration officials, the applicant willfully misrepresented a material fact in order to procure admission into the United States. Thus, the applicant was correctly deemed inadmissible under section 212(a)(6)(C)(i) of the Act.

Subsequent to filing the present appeal, counsel submitted a letter to the director, dated March 15, 2001, in which he asserts that the applicant is eligible for relief under section 245(i) of the Act. Specifically, counsel states that section 245(i) of the Act "allows a person who qualifies for permanent residency, but is ineligible to adjust status in the United States because of an immigration status violation, to wit: entering the country on a photo switch, to continue processing their adjustment once the penalty is paid." Counsel characterizes the applicant's entry to the United States as an "immigration status violation." However, as discussed above, the applicant engaged in fraud and misrepresentation in order to procure admission to the United States, and such act did not constitute a violation of a lawful immigration status. Further, section 245(i) of the Act only provides relief to those deemed admissible to the United States. Section 245(i)(2)(A) of the Act. As the applicant has been found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, he is statutorily ineligible for relief under section 245(i) of the Act.

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 hardship 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, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals 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 U.S. citizen spouse is now pregnant, and she will suffer extreme hardship if the applicant is compelled to return to Jamaica. *Brief in Support of Appeal*, p.2. Counsel further states that the director erroneously indicated that the applicant and his spouse have been building a relationship for 10

years, when in fact it has been 15 years. *Id.* In a brief submitted with the Form I-601 Application for Waiver of Ground of Excludability, counsel asserted that the applicant's spouse "would be denied the love and affection of her husband which has been built up over the last (10) years." *Brief in Support of Form I-601*, p.1, received March 30, 2000. Counsel provided that the applicant commenced employment in the United States, and his income is helping to relieve his spouse's financial difficulties. *Id.* at 1-2.

Although counsel indicates that the applicant's spouse is pregnant, the applicant provides no evidence to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the applicant has not established that his spouse will suffer hardship due to being pregnant in the applicant's absence.

Counsel asserted that the applicant's spouse will "be denied the love and affection" of the applicant as a result of separation from the applicant. *Brief in Support of Form I-601*, p.1. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she 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 based on the record. 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.

Counsel suggested that the applicant's wife will suffer financial hardship if the applicant is denied a waiver of inadmissibility, as the applicant's current employment is relieving his wife's financial difficulties. *Brief in Support of Form I-601*, p.1-2. The AAO acknowledges that the applicant and his spouse may be required to alter their living arrangements and maintain two households as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse will be unable to maintain her financial situation if the applicant departs from the United States. 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.

Further, on appeal counsel states that the applicant and his spouse have developed their relationship over a 15-year period. *Brief in Support of Appeal*, p.2. Yet, in is brief submitted with the Form I-601 application, counsel represented that the applicant and his spouse have developed their relationship over a 10-year period. *Brief in Support of Form I-601*, p.1. It is incumbent upon the applicant to resolve any inconsistencies in the

record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the applicant has submitted no evidence to show the length of his relationship with his spouse, the applicant has failed to resolve this inconsistency.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.