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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: DENVER, COLORADO

Date: JUL 08 2005

IN RE:

Applicant:

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:

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

The applicant is a native of and citizen of the United Kingdom. She is also a citizen of Sudan. The applicant procured a benefit under the Act, namely, asylum, by failing to reveal her U.K. citizenship and presenting false information in her asylum claim. 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 naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The interim district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband and denied the application accordingly. On appeal, counsel discusses the difficult country conditions in Sudan, and asserts that the applicant's husband and children will suffer extreme hardship whether they travel to Sudan or remain in the United States. Counsel does not discuss the consequences to the applicant's qualifying relative should the applicant return to the United Kingdom, however. On appeal, counsel submits an affidavit by the applicant, a psychological report for the applicant and her family, country conditions information about Sudan, and other documentation. The AAO has reviewed the record in its entirety and concurs with the interim district director's determination on the issue of extreme hardship.

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. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, 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 or in seeking other benefits provided under the Act. In this case, the applicant made material misrepresentations in order to obtain asylum, in violation of § 212(a)(6)(C) of the Act.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 or her child experiences upon deportation is irrelevant. In the present case, only hardship the applicant's husband suffers may be considered. Thus, although the record contains assertions regarding the applicant's children's potential difficulties in Sudan or in the United States without the applicant, such hardship is only relevant inasmuch as it causes the qualifying relative (the applicant's husband) to suffer extreme hardship. 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). In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999), the Board held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 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 must establish that her husband would suffer extreme hardship in the event she is removed from the United States. Counsel submits information concerning the potential hazards and systemic weaknesses in Sudan. Counsel also asserts that the applicant's husband would undergo financial hardship should he relocate to Sudan, as he would have to give up his business in the United States and would be unable to find suitable employment in Sudan. Counsel maintains that the applicant's husband would suffer due to the lack of medical care in Sudan.

While the country conditions information indicates that certain regions and ethnic groups in Sudan are indeed in conflict, the record does not establish that the applicant's husband is at risk of harm for any particular reason, or that he has medical concerns that cannot be addressed in Sudan. Moreover, there is no evidence on the record that the applicant's husband would be unable to obtain employment in Sudan. It is noted that 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.

Notably, the record fails to address the possibility of the applicant's husband's relocation to the United Kingdom, of which the applicant is also a citizen. There is no evidence that the applicant's husband would suffer any hardship should he travel to the United Kingdom to accompany the applicant.

The applicant has also failed to establish that her U.S. citizen spouse would suffer extreme hardship should he

remain in the United States in her absence. On appeal, counsel submits a psychological evaluation prepared by [REDACTED] on February 1, 2004. [REDACTED] reports that the applicant and her husband have a solid marriage and appear to be dedicated to their children. She expresses the opinion that the applicant's husband would experience severe emotional hardship if the applicant is removed. [REDACTED] does not indicate whether she conducted therapy with the applicant's husband prior to or subsequent to the meeting upon which the evaluation was based. She does not recommend any medical, psychiatric, or psychological treatment for the applicant's husband. The psychological evaluation does not establish that the applicant's husband would undergo emotional distress greater than that which similarly situated individuals experience.

The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. 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. Also, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her 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 she 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.