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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: VIENNA, AUSTRIA

Date: JUN 10 2005

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: 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 Acting Officer in Charge, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States under § 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a Lawful Permanent Resident (LPR) of the United States, and he seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to join his wife and child in the United States.

The acting officer in charge 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. On appeal, the applicant asserts that he did not procure his nonimmigrant visa through willful misrepresentation, because his intention was only to visit with his brother, and not to work in the United States. The applicant contends that he was not unlawfully employed in the United States, and that he maintained his B-2 visitor status at the time he applied for his extension of status. The applicant also states that his family would suffer extreme hardship if he is not admitted to the United States. The applicant discusses his young daughter's diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and how his absence might affect her. He submits a medical note showing that his daughter was diagnosed with ADHD. He does not focus on his wife's hardship, however. The AAO has reviewed the entire record in this matter and concurs with the acting officer in charge's determination.

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 entered the United States with a tourist visa on March 23, 1998, and that within one week, he began to work for his brother in exchange for food, clothing, and money. The acting officer in charge therefore concluded that the applicant had procured his tourist visa by willful misrepresentation of a material fact, for which he is inadmissible pursuant to § 212(a)(6)(C)(i) of the Act. The applicant submits no evidence to rebut the finding of the acting officer in charge.

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 himself or his child experiences upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. The applicant's daughter's condition may be considered only insofar as affects his wife; that is, the applicant must establish, for example, that his absence causes his wife to suffer extreme hardship because his daughter requires greater care than the applicant's wife is able to provide. 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 § 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 medical statement provided establishes that the applicant's daughter suffers from ADHD. The documentation does not establish what type or amount of special care she needs, and it does not establish that the applicant's wife is unable to care for their daughter herself. The doctor's note states that the applicant's daughter is emotionally unstable and cannot tolerate the absence of either parent. The doctor does not indicate how he arrived at this conclusion, given that ADHD does not necessarily have any connection with such symptoms. The doctor does not mention what impact the applicant's absence might have on his daughter's prognosis, nor does he recommend any specific therapy or treatment. In sum, the AAO is unable to conclude that the fact that the applicant's daughter has ADHD creates a situation in which the applicant's absence would cause his wife to suffer extreme hardship.

In her statement submitted with the I-601 application, the applicant's wife wrote that she would find it impossible to support her family without her husband's income. The record does not establish that she cannot meet her financial needs or that the applicant is unable to contribute to his family's finances while he is in Romania. 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.

The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. Her situation is not taken lightly, and all her circumstances are given due consideration. However, the difficult choices and challenges she faces are typical to individuals separated as a result of deportation or exclusion and do not amount to 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.

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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.