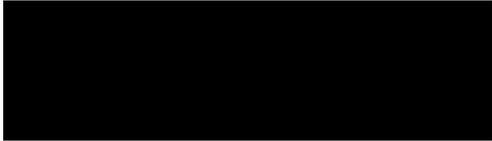




U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: PHOENIX, AZ

Date:

NOV 18 2005

IN RE:



PETITION: 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 PETITIONER:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to 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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

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 March 19, 2004.

On appeal, counsel states that Citizenship and Immigration Services erred in denying the application for waiver of grounds of inadmissibility. Counsel contends that CIS abused its discretion and did not consider the cumulative effect of the hardship factors enumerated in the application. *Form I-290B*, dated April 16, 2004. In support of these assertions, counsel submits a brief, dated April 14, 2004; a letter from the applicant's spouse, dated April 7, 2004; a statement from a family practice physician, dated April 14, 2004; a statement from a clinical social worker, dated April 14, 2004 and an invoice from a school attended by the applicant's child, dated March 18, 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on July 6, 1999, the applicant attempted to procure admission to the United States by willful misrepresentation to an immigration officer. The record further reflects that on July 7, 1999, the applicant failed to disclose the events of July 6, 1999 to an immigration officer in procuring admission to the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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 herself 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 Board 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 spouse would suffer hardship as a result of relocation to Canada in order to remain with the applicant. Counsel contends that the applicant's spouse is a United States citizen and does not have any relatives in Canada. *Motion to Reconsider*, dated April 14, 2004. The AAO notes that the record fails to reflect which of the relatives of the applicant's spouse reside in the United States. Further, the record fails to establish the nature and extent of the relationship(s) of the applicant's spouse to any relatives he may have residing in the United States. Counsel states that the applicant's spouse will suffer as a result of leaving his employment with Intel and requiring his child to leave the school she attends. *Id.* at 4-5. Counsel indicates that Intel does not have offices in Ottawa and "the chances of Mr. Kadado securing a position with Intel in Canada are virtually nonexistent." *Id.* at 5. The AAO notes that the record fails to reflect whether or not Intel maintains any offices in Canada at which the applicant's spouse may obtain employment. Further, the record fails to demonstrate that the applicant's spouse is unable to obtain employment in Canada comparable to the position he maintains with Intel in the United States. Counsel contends that the applicant's spouse has worked to build a career and stands to "lose everything" if he relocates to Canada, but does not explain why the skills and education of the applicant's spouse cannot be utilized in his spouse's home country. *Id.* While any financial detriment suffered by the applicant's spouse as a result of relocation to Canada is regrettable, financial loss on the scale described by counsel is an experience common to individuals confronted with inadmissibility and does not constitute extreme hardship to the applicant's spouse. *Id.* ("He would lose his ownership in Dynamic Imaging Systems, Inc. ... [and] would be forced to the sell the shares at 'book value,' significantly lower than the stocks [sic] full earning potential"). Moreover, the decision of the district director made similar findings based on the evidence presented by counsel in relation to the shares owned by the applicant's spouse and counsel fails to provide different or more detailed information on appeal.

The record also fails to establish extreme hardship to the applicant's spouse if he remains in the United States in order to maintain his employment, investments in the stock market and his daughter's education at her

current school. Counsel asserts that the applicant's spouse suffers emotional and psychological hardship as a result of the applicant's inadmissibility and submits a note from a family practice physician stating that the applicant's spouse suffers from "marked depression". *Letter from Clark Wyson, MD*, dated April 14, 2004 ("It is my clinical judgement [sic] that being separated from his wife or being forced to emigrate to keep his family intact would worsen his condition and impose an extreme hardship"). In addition to these remarks from a family physician, counsel submits a letter from a clinical social worker finding that the applicant's spouse "manifested symptoms of clinical depression." *Letter from Cherie L. Pray, ACSW, CISW, CAC*, dated April 14, 2004. The AAO notes that the applicant's spouse was seen by the evaluating clinical social worker on just two occasions. *Id.* The letter indicates that the applicant's spouse was provided with a prescription to counteract his symptoms yet the record fails to demonstrate whether or not the medication alleviates the symptoms suffered by the applicant's spouse. *Id.* The AAO acknowledges that it was the intent of the evaluating social worker to continue treating the applicant's spouse, however the record fails to evidence the continuation of treatment by a mental health professional and therefore fails to provide the basis for a finding of extreme psychological hardship. *Id.* ("I will continue to work with and support this client.").

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* 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. Moreover, the AAO notes 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant or relocation to a new country. However, his 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 she 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.