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**U.S. Citizenship
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FILE:



Office: BALTIMORE, MARYLAND

Date: **AUG 08 2006**

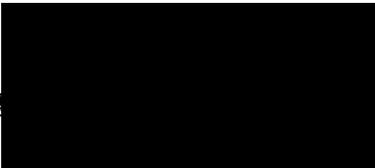
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Nepal who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be 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), for having procured a benefit under the Act (work authorization) by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with his wife and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and denied the application accordingly. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to consider his July 21, 2004 response to the district director's Notice of Intent to Deny the adjustment application. Counsel also asserts that, since the applicant withdrew his fraudulent asylum application, "the allegation of fraud by the service [now CIS] is moot." *Letter in support of appeal*, at 2. In 1993 the applicant submitted a fraudulent asylum application, which he signed, indicating that all the information contained therein was true. The applicant obtained a benefit under the Act by virtue of his fraudulent asylum application. His withdrawal of that application eleven years later does not change the fact that the applicant obtained a benefit through his misrepresentation. Counsel also contends that the psychological report on the record establishes that the applicant's wife would undergo severe emotional hardship on account of the applicant's inadmissibility. The entire record was reviewed and considered in rendering this decision, and the AAO concurs with the district director's findings regarding the lack of extreme hardship to the applicant's spouse.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's July 1993 submission of a fraudulent asylum application in order to obtain a work authorization card. The applicant used the work authorization card to obtain the in-state tuition assessment at the school he was attending in Alabama. The July 15, 2004 withdrawal of his asylum application does not constitute a timely retraction, nor does it cure his previous misrepresentation; hence, he is inadmissible under this section of the Act.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1).

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. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. Hardship to the applicant’s U.S. citizen child will therefore be considered in this analysis only insofar as it affects the hardship experienced by his spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, 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. *Id.* at 566.

The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel contends that the applicant’s spouse would suffer extreme hardship as a result of relocating to Nepal to remain with the applicant, because she has already undergone an extremely traumatic experience, and also because the personal safety of U.S. citizens is at risk in Nepal. The record contains no evidence regarding any danger to the applicant’s wife in Nepal. The record includes a report dated January 16, 2004

██████████ who interviewed the applicant and his wife on one occasion. ██████████ wrote that when she was in high school, the applicant's wife was traumatized by the deaths of her mother, sister, and niece in a house fire. ██████████ stated that a move to Nepal would cause her to suffer trauma once again, because she depends on her father and siblings in the United States for emotional support, and because she would probably be the only person of Hispanic origin in Nepal. In her own statement dated January 19, 2004, the applicant's wife wrote that she visited Nepal once and was dismayed by the poverty she witnessed there. She stated that there is political violence in Nepal, and that she wishes to raise her daughter in the United States in order to provide her with a good education.

There is no information on the record regarding the presence or absence of people of Hispanic origin in Nepal. The record does not establish that the applicant's wife would be unable to adjust to a new situation in that country, or that relocating to Nepal would cause her to become unable to care for herself or her child or carry out her daily activities. ██████████ did not recommend that the applicant's wife obtain medical or psychological treatment for her symptoms, nor did he include any detailed information about the effect that a move to Nepal would have on her. The trauma that the applicant's wife underwent during her childhood is not diminished; however, the AAO is unable to conclude that she would suffer greater than usual stress as a result of a relocation to Nepal.

Counsel also maintains that the applicant's wife would suffer extreme hardship if she remains in the United States without the applicant. The record does not include evidence that the emotional hardship she would suffer in his absence would go beyond that which usually accompanies the removal of a spouse. The AAO does not disregard or take lightly the applicant's wife's concerns regarding the choices and changes she may face due to the applicant's inadmissibility; however, her experience is not demonstrably more negative than that of other spouses separated as a result of removal.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). *Perez v. INS, supra*, defined “extreme hardship” as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's or spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United States. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.