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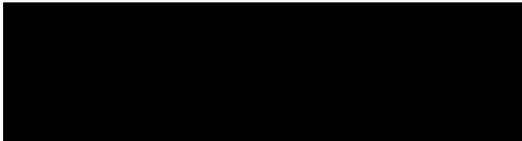
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U.S. Citizenship  
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**JUL 05 2006**

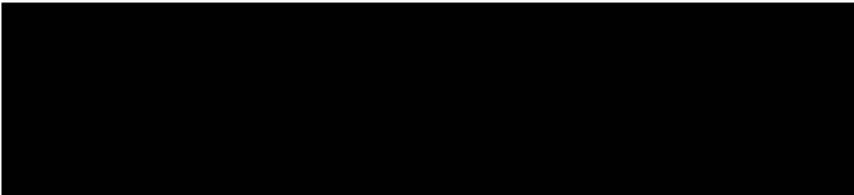
IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Fiji 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband.

The district director concluded that the applicant 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 May 24, 2004.

On appeal, counsel for the applicant contends that the applicant has shown that her husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated May 26, 2004. Counsel asserts that, with the exception of a single instance of misrepresentation, there are no negative factors that weigh against the applicant. *Brief in Support of Appeal*, submitted June 16, 2004.

The record contains briefs from counsel in support of the appeal and the Form I-601 application; statements from the applicant and the applicant's husband; a copy of the applicant's and the applicant's husband's birth certificates; a copy of the applicant's marriage certificate; a copy of the applicant's passport and Form I-94 departure record; tax records for the applicant and her husband; documentation verifying the applicant's and her husband's employment; a Form I-864, Affidavit of Support, executed by the applicant's husband on her behalf, and; documents relating to the applicant's misrepresentation in obtaining a U.S. visa. 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 applied for a B-2 visa at the American Embassy in Suva, Fiji. She claimed that she was married, when in fact she was not. Based on the applicant's misrepresentation which implied close ties to Fiji, she was issued a visa on March 8, 1999. She entered the United States on March 14, 1999, and married a U.S. citizen on October 17, 1999. Thus, the applicant procured a visa by fraud or willful misrepresentation. Accordingly, she 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). The applicant does not contest her inadmissibility on appeal.

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 hardship suffered by the applicant's husband. 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant contends that the applicant has shown that her husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated May 26, 2004. The applicant's husband expresses that he shares a close relationship with the applicant, and that she has helped him both economically and emotionally. *Statement from Applicant's Husband*, dated June 7, 2004. He indicates that he and the applicant have started a janitorial business, which would not have been possible without relying on the applicant's good credit. *Id.* The

applicant's husband provides that he and the applicant intend to foster a child and they wish to start a family. *Id.* He states that he may experience psychological problems if the applicant is compelled to depart the United States. *Id.*

The record contains descriptions of hardships the applicant faced in Fiji prior to coming to the United States, including an incident of rape and other attacks on her and her family home. *Statement from Applicant*, dated May 11, 2004; *Brief in Support of Appeal*, submitted June 16, 2004.

Counsel asserts that, with the exception of a single instance of misrepresentation, there are no negative factors that weight against the applicant. *Brief in Support of Appeal*, submitted June 16, 2004.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant experienced in Fiji, implying that she will face similar circumstances should she return there. However, hardship to the applicant is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant will bear significant consequences if her waiver application is denied, only hardship to the applicant's husband may be properly considered in this section 212(i) waiver proceeding.

The applicant's husband expresses that he is close with the applicant, and that he will experience significant emotional hardship if he is separated from her. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant should he remain in the United States. However, his situation 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.

The applicant's husband indicates that he will experience economic hardship if the applicant departs the United States. He indicates that he and the applicant have started a janitorial business, implying that the business would be negatively impacted without the applicant's participation. However, the applicant has not submitted evidence to show that she and her husband in fact operate a business. The applicant's husband states that he works part-time, though he does not indicate his current income. Nor does the applicant provide a clear account of her and her husband's monthly expenses such that the AAO can assess whether he husband can meet his needs alone. 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)). Thus, the applicant has not provided sufficient documentation to establish that her husband will experience extreme economic hardship should she depart the United States.

It is further noted that the applicant's husband is free to relocate abroad with the applicant if he chooses. The applicant has not explained whether her husband has prior experience with or contacts in Fiji. Nor has the applicant provided explanation or documentation to show what job prospects she or her husband may find in Fiji. Yet, as English is widely spoken in Fiji, it is evident that the applicant's husband would not be compelled to adapt to an unfamiliar language. However, as a U.S. citizen, the applicant's husband is not required to reside outside the United States as a result of the applicant's inadmissibility.

Counsel asserts that, with the exception of a single instance of misrepresentation, there are no negative factors that weigh against the applicant. *Brief in Support of Appeal*, submitted June 16, 2004. However, a balancing of positive and negative factors is only required of CIS when determining whether an applicant warrants a favorable exercise of discretion. Where, as in the present matter, an applicant has failed to show that a qualifying relative will experience extreme hardship, CIS lacks discretion to approve an application for a waiver, and a weighing of positive and negative factors is not required. Section 212(i)(1) of the Act.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by her husband should she be prohibited from remaining in the United States, considered in aggregate, rise to the level of extreme hardship. 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(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.