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FILE:

Office: NEWARK DISTRICT OFFICE

Date:

**NOV 21 2006**

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant [REDACTED] is a native and citizen of Honduras 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 his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, his U.S. citizen wife, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 7, 2005; *Notice of Intent to Deny*, dated February 9, 2005.

On appeal, the applicant's representative contends that the applicant had submitted sufficient evidence that she would suffer extreme hardship if her husband were denied a waiver of inadmissibility, including, "evidence of the special medical needs of her U.S. citizen child, [REDACTED] which is one of the factors to consider. This medicine [sic] would be unobtainable to the family in Honduras," and the applicant's affidavit. See *Representative's Statement*, attachment to Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), dated March 21, 2005.

In addition to the Representative's Statement on appeal, the record contains (1) a Memorandum in Support of Waiver; (2) an affidavit by the applicant's wife explaining that she and her two children would suffer hardship in Honduras, that she has shared custody of her two children and their fathers would not allow them to go there, that her father is ill and needs her as a caretaker, that her family lives in the United States and she would suffer hardship if she left them, that her husband supports her and her children, and that she could not maintain their basic standard of living, and that she would have to give up her studies to return to full time work and she and her children would suffer both financially and emotionally from the loss of her husband; (3) various medical records for the applicant's stepson indicating treatment for childhood respiratory infections and a facial injury; (4) a statement from the father of the applicant's wife stating that he is permanently disabled and needs his daughter's care; and (5) income tax records indicating that the applicant's wife earned approximately \$12,200 in 2000, and the applicant's income ranged from \$18,300 in 2001 to \$36,400 in 2003. Although Representative's Statement on appeal and the Memorandum in Support of Waiver and the applicant's wife's statement refer to multiple exhibits and supporting documentation on asthma, country conditions in Honduras, family ties in the United States, and various medical reports, these documents do not appear in the record. The entire record was reviewed and considered in rendering this decision.

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.

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 . . . .

The record reflects that the applicant attempted to enter the United States using false documents in 1993 or 1994. For this prior misrepresentation, the applicant 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 his inadmissibility on appeal.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to his children is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen wife is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

U.S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v.*

*INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors.

On appeal, the applicant's representative contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. The representative states that factors for consideration include the special medical needs of the U.S. citizen child of the applicant's wife (the applicant's stepson) and the fact that medicine would not be available in Honduras. However, there is no evidence in the record of any special medical needs or any evidence of the availability of medication in Honduras. The only medical reports in the record indicate that, between 1998 and 2001, the applicant's stepson Jose, born in 1998, was taken for pediatric checkups and treatment for a variety of ailments, including colds, coughs and respiratory infections and a facial injury. The assertions of his representative do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's wife also contends in her affidavit, but without any supporting documentation, that her son has asthma and cannot get medication in Honduras, her father is suffering from lung cancer, and all of her family lives in the United States. 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)). Moreover, children are not qualifying relatives for purposes of a section 212(i) waiver, nor is the father of the applicant's wife.

The record indicates that the applicant was born in Honduras in 1971 and entered the United States in 1995; his wife was born in Puerto Rico in 1970; they were married in 2001. The applicant's wife states that she has two U.S. citizen children that she would not be able to take with her to Honduras, both for medical reasons and because she shares custody with their fathers who would not permit them to go to Honduras. Aside from an affidavit from the father of the applicant's wife, there is no evidence of family ties in the United States by either the applicant or his wife; there is no reason to believe that the applicant's U.S. citizen wife has any ties to Honduras other than the fact that her husband was born there. As noted above, the record is silent as to economic, social or political conditions in Honduras. Regarding the financial impact of the applicant's inadmissibility, the record reflects that the applicant works as a dealer, and his wife worked as dealer in 2000, in Atlantic City. There is no recent evidence in the record regarding his wife's current income. The applicant contributes significantly to the support of the family based on his tax records and statements by his wife. There is no evidence in the record regarding the ability of the applicant or his wife to use their skills and experience to earn a living in Honduras or the availability of employment in Honduras.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant should she choose to remain in the United States with her children. However, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Though the applicant's income is substantial, the record reflects that the applicant's wife is able to work to support herself and her children. The loss of her husband's income is significant, but the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.").

Again, it is noted that the applicant's wife may relocate to Honduras with the applicant to avoid the hardship of separation if she chooses, though she is not required to do so. She was born in Puerto Rico and a move to Honduras would be difficult to the extent that she would need to adjust to an unfamiliar culture and be separated from familial and community ties in the United States; there would also be the economic consequences of giving up employment in the United States. However, there is no documentation regarding conditions in Honduras or any evidence that supports a conclusion that she and her husband would be unable to meet their financial needs in that country. The AAO does not discount the hardship of separation from family in the United States that would go beyond the common results of removal; if, as claimed, the applicant's wife cannot take her children with her, and if her father is very ill, separation from them would represent a significant hardship to her. However, the evidence on record does not support such a conclusion. Moreover, as noted above, the applicant's wife may choose to stay in the United States with her children and other family members.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. Regarding any hardship suffered by the applicant's wife, should she choose to accompany her husband to Honduras or remain in the United States separated from him, without documentary evidence to support the claim, the assertions of his representative and statements of the applicant's wife will not satisfy the applicant's burden of proof. In either case, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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 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.