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FILE:



Office: PHOENIX

Date: NOV 29 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(2)(6) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(6)

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 District Director, Phoenix, Arizona denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mr. [REDACTED]) is a native and citizen of Canada who last entered the United States on September 23, 1996, as an F-1 student and applied for adjustment of status on October 16, 2002. In order to remain in the United States with his U.S. citizen (U.S.C.) spouse, [REDACTED] (Mrs. [REDACTED]), their U.S.C. child, and his lawful permanent resident (LPR) mother, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for having sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that Mr. [REDACTED] attempted to enter the United States on June 24, 1990, as an F-1 student. The immigration officer found that Mr. [REDACTED] was an intending immigrant and denied him entry into the United States. The next day, on June 25, 1990, Mr. [REDACTED] attempted entry again. The immigration officer asked Mr. [REDACTED] twice if he had ever been denied entry into the United States and both times Mr. [REDACTED] answered no. The immigration officer then denied Mr. [REDACTED] entry for attempting to gain [REDACTED] misrepresenting a material fact and placed him in exclusion proceedings. The Immigration Judge ordered Mr. [REDACTED] excluded in absentia on March 31, 1992. As a result of this misrepresentation, the district director found the applicant to be inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i). *District director's decision*, dated April 22, 2005. The district director also found 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 Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits no new evidence but asserts that Mr. [REDACTED] wife will suffer extreme hardship if his Form I-601 is denied. *Brief, dated June 21, 2005.* In addition to this brief, the record includes the following documentation: two statements from Mrs. [REDACTED] one dated October 14, 2002 and one dated August 21, 2004; tax returns from 2001-2003; and employment verification letters for Mr. and Mrs. [REDACTED]. The AAO reviewed the record in its entirety before reaching its 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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or LPR spouse or parent of the applicant. Hardship to the applicant himself and to his USC child is not considered under the statute except in relation to how it affects his qualifying relatives, in this case, his USC wife and LPR mother. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 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 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).

Counsel asserts that Mrs. [REDACTED] would suffer extreme hardship if she relocates to Canada with her husband because all of her family ties are in the United States. Counsel did not submit a list of Mrs. [REDACTED] USC or LPR family members or evidence of their immigration status. Counsel asserts that Mrs. [REDACTED] cannot move to Canada because her sister suffers from a seizure disorder but did not submit evidence of this disorder or evidence of the extent to which Mrs. [REDACTED] provides care to her sister. 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)). In addition, separation from extended family, while difficult, has not been found to amount to extreme hardship.

Counsel asserts that Mrs. [REDACTED] will suffer extreme emotional hardship if separated from her husband because she will have to raise her daughter as a single mother. Counsel submitted two statements from Mrs. [REDACTED] to support this assertion, but did not submit any objective evidence to supplement Mrs. [REDACTED] claim of extreme emotional hardship. *Matter of Soffici*.

Counsel asserts that Mrs. [REDACTED] will suffer extreme financial hardship if Mr. [REDACTED] Form I-601 is denied. The evidence of record does not support this assertion. Counsel asserts that physical therapists in Canada are not well-compensated and that Mr. [REDACTED] earning potential would be cut in half if he were forced to relocate to Canada but submits no documentation to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel 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). Mrs. [REDACTED] states that she and her husband conducted extensive research on the job market for physical therapists in Canada but did not submit any of this research. Mrs. [REDACTED] states that Mr. [REDACTED] would have to complete several time-consuming and costly steps to work as a physical therapist in Canada and that the starting salary for physical therapists in Canada is substantially lower than what Mr. [REDACTED] is currently making at his job. Again, nothing was submitted to document these assertions. *Matter of Soffici*. In addition, no explanation was given as to why Mr. [REDACTED] would receive an entry-level salary in Canada rather than a salary commensurate with his experience. Mrs. [REDACTED] submitted a breakdown of the family's monthly expenses, but, again, she did not submit evidence to document these expenses. *Id.* Even if Mr. [REDACTED]'s income is diminished by moving to Canada, there is no indication that Mrs. [REDACTED] who has the earning potential of at least \$45,000 per year, would suffer extreme economic hardship if her husband moved to Canada. *See Mr. [REDACTED] employment verification letter*. In addition diminished income does not equal extreme hardship.

Counsel asserts that Mrs. [REDACTED] would suffer extreme hardship if her husband is forced to relocate to Canada because she and her daughter would be left without health insurance. Counsel does not explain or document why Mrs. [REDACTED] would be unable to obtain health insurance on her own.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. [REDACTED] wife faces extreme hardship if Mr. [REDACTED] is refused admission. 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that Mr. [REDACTED] deportation would cause to his spouse and children). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS*, *supra*, at 468.

In this case, although the applicant's wife will endure hardship if she remains in the United States separated from the applicant, or if she joins him in Canada and is separated from her family in the United States, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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)(9)(B) 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.