



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE, MD

Date: **SEP 19 2006**

IN RE:

[REDACTED]

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:

[REDACTED]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Czech Republic who was found to be inadmissible to the United States (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation in 2002. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not contain evidence to demonstrate that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal. The application was denied accordingly. *Decision of the District Director*, dated February 10, 2005.

On appeal, counsel states that the director's decision "misappreciates" the facts of the case and abused his discretion by concluding that the applicant would not suffer extreme hardship. *Counsel's Appeals Brief*, undated.

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 indicates that in May 2002 the applicant made several false statements to a U.S. consular officer in Prague while applying for a visitor's visa. The applicant stated that he was traveling to the United States for tourist purposes, however during his adjustment interviews in 2003 and 2004 he stated that his sole purpose for traveling to the United States was to work. Thus, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences or his step-child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Czech Republic or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she will suffer extreme hardship as a result of being separated from the applicant. She also states that her son will suffer hardship as a result of being separated from his step-father. She feels that watching her child suffer is an added hardship to herself. Counsel states that the spouse's son suffers from depression and suicidal ideation. The applicant submitted a letter from a social worker, Ms. [REDACTED] dated December 14, 2004. Ms. [REDACTED] states that the spouse's son meets the criteria for Anxiety Disorder and Mood Disorder due to the stressful nature of the applicant being removed from the United States. She states that the son is scared of having an emotional breakdown and is scared for his mother. The spouse's son states he feels hopeless and confused by the idea of the applicant not being in his life. Ms. [REDACTED] states that a second therapy session was scheduled for the spouse's son.

The AAO notes, as stated above, hardship the applicant's step-child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. Moreover, the applicant did not establish how the hardship suffered by the spouse's son is causing a hardship to his spouse that amounts to extreme hardship. The record does not indicate whether the symptoms suffered by the spouse's son are temporary or if they can be overcome with treatment and/or therapy. There was no follow-up report showing the results of further treatment for the spouse's son. Furthermore, the AAO notes that the submitted mental health report is based on a single interview between the applicant's family and the social worker. The record fails to reflect an ongoing relationship with the applicant's family or any history of treatment for the disorder suffered by the applicant's step-son. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering Ms. [REDACTED] findings speculative and diminishing the reports value in determining extreme hardship to the applicant's spouse. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Czech Republic. Counsel states that the applicant's spouse will suffer extreme hardship if she relocates to the Czech Republic because all of her family resides in the United States. Counsel states that it would be difficult for the applicant's spouse to raise her son in the Czech Republic because he suffers from depression and because of the quality of life in the Czech Republic. The applicant's spouse states that she and her son cannot speak Czech. The applicant did not submit any country reports to support the claims about the quality of life in the Czech Republic or his spouse's ability to adjust to life there.. The AAO finds that the current record does not establish a finding of extreme hardship suffered by the applicant's spouse.

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.

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 he 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.