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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

112

FILE:

[REDACTED]

Office: ALBANY, NY

Date:

APR 12 2007

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]

**PUBLIC COPY**

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 Officer in Charge, Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Thailand 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 having procured admission into the United States by fraud or willful misrepresentation on July 31, 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 officer in charge concluded that although the applicant's case presents, to a degree, all the factors in *Matter of Cervantes*, it is not evident that these factors rise to the level of extreme hardship. The application was denied accordingly. *Decision of the Officer in Charge*, dated December 27, 2004.

The applicant filed a Motion to Reconsider on January 25, 2005 which stated that: the Service erred regarding the sequence of events and the knowledge that the applicant's spouse had regarding the applicant's intent to reenter the United States; the Service failed to properly consider the applicant's spouse's extensive family and financial ties to the United States or his lack of family and employment opportunities in Thailand; and that the applicant is remorseful for her actions. *Motion to Reconsider*, dated January 24, 2005.

The officer in charge found that the documentation submitted both with the original filing and subsequent motion failed to establish that the applicant's inadmissibility would cause extreme hardship to the applicant's spouse. *Decision of the Officer in Charge*, dated April 5, 2005.

On appeal, counsel asserts that the previous decisions by the officer in charge distort crucial facts concerning the extreme hardship the applicant's spouse will suffer, fail to discuss all the relevant facts, individually and in the aggregate, and misapply the law. Counsel also asserts that the Citizenship and Immigration Services' (CIS) decision failed to address the submitted psychological reports and that the applicant is remorseful and had demonstrated rehabilitation. *Counsel's Brief*, dated May 10, 2005.

The record indicates that on July 31, 2002, the applicant, at JFK international airport in New York, presented an F1 student visa to enter the United States. The applicant stated to the immigration officer that she was a student at the University of Wisconsin, when in fact she had stopped her studies at the university and was intending to reside in the United States with her fiancé.

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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 he resides in Thailand or in the event that he resides in the United States, as he 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 to her spouse in the event that he resides in Thailand. Counsel states that the applicant's spouse was born and raised in the Albany, New York area and his entire family, with the exception of one uncle, lives in the United States. Counsel states that the State Department Human Rights Report for Thailand reports that the country is part of the developing world with rampant corruption, widespread criminal and political violence and a very low standard of living. Counsel also states that the report shows the average daily wage for Thailand as \$3 to \$4. *Counsel's Brief*, dated May 10, 2005. In support of these assertions counsel submitted a 2003 State Department report on human rights practices in Thailand and a State Department Travel Advisory for Thailand. The travel advisory warns Americans not to travel to certain areas of Thailand. *Travel Advisory for Thailand*, dated April 8, 2004. The record indicates that the applicant's spouse also has significant financial ties to the United States. Counsel submitted documentation showing that the applicant's spouse recently purchased a greenhouse business for \$100,000 and the subsequent expenses he is incurring as a result of running this business. The applicant's spouse states that his family also owns and runs DiSiena Hardware and Paint Store. *Spouse's Statements*, dated May 4, 2004 and January 24, 2005. He states that he helps his parents with this family business because his two uncles, who used work at the store, are not able to work because of medical conditions. *Id.* The AAO finds that because of the applicant's strong family ties to the United States, his inability to speak the Thai language, and his financial obligations in the United States, relocating to Thailand would cause him extreme hardship.

However, the applicant has not shown that her spouse would suffer extreme hardship as a result of being separated from the applicant. The record indicates that the applicant and her spouse met in March 2001 and were married in February 2003. Counsel has submitted a psychological evaluation from Dr. [REDACTED] Fine of Affiliated Psychological Services in Latham, New York. Dr. [REDACTED] states that the applicant's spouse is extremely anxious about his wife's immigration difficulties and has scary thoughts about being separated. Dr. [REDACTED] dated May 11, 2004. Counsel has also submitted an addendum to Dr. [REDACTED] evaluation,

which states that the applicant's spouse has become progressively more distressed over the possibility of the applicant having to leave the United States and feels caught between his loyalty to his wife and marriage and his business investments and his parents' need for assistance. *Addendum to Dr. [REDACTED]'s Evaluation*, dated January 21, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted reports do not indicate the number or length of the interviews that Dr. [REDACTED] indicates he conducted with the applicant and her spouse. Moreover, the addendum, prepared by Dr. [REDACTED] eight months after the initial evaluation simply states that the reason for the addendum is because additional information has come to his attention. There is no indication that the applicant or her spouse were interviewed for a second time and Dr. [REDACTED] does not specifically identify the source of this additional information. Thus, the AAO finds Dr. [REDACTED]'s conclusions to be speculative and of diminished value in determining extreme hardship. The AAO also notes that based on his findings, Dr. [REDACTED] has not recommended that the applicant's spouse undergo further evaluation or seek treatment for his concerns regarding the applicant's possible removal from the United States. AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 she 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.