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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHOENIX, ARIZONA

Date: **AUG 21 2007**

[relates]

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:

SELF-REPRESENTED

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 Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Malaysia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting her marital status in order to procure a visa. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen spouse.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Acting District Director's Decision*, dated September 23, 2005.

On appeal, the applicant's husband states that he loves his wife and needs her in the United States to survive. *Form I-290B*, filed October 19, 2005.

The record includes, but is not limited to, a statement from the applicant's husband and the applicant's marriage certificate.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) 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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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...

In the present application, the record indicates that the applicant married [REDACTED], a United States citizen, on September 15, 2000, in Kuala Lumpur, Malaysia. On December 16, 2000, the applicant entered

the United States on a B2 nonimmigrant visa, with authorization to remain in the United States until June 15, 2001. On the applicant's tourist visa application, she listed herself as single even though she was married. On April 9, 2001, the applicant's husband filed a Form I-130 on behalf of the applicant. On May 10, 2001, the Form I-130 was approved. On August 10, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On July 26, 2005, the applicant filed a Form I-601. On September 23, 2005, the Acting District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant's husband states that he "cannot survive if [he had to] live in Malaysia." *Form I-290B, supra*. The applicant's husband claims he would have "major obstacles" to overcome should he move to Malaysia to be with the applicant, like "attempting to live in a country that is hostile to America and Americans...[and he] would be unemployable in Malaysia because [he is] an American and a non-Muslim...[and he would have] no freedom of speech." *Letter from [REDACTED]*, dated October 11, 2005. The AAO notes that the applicant failed to establish that she and her husband could not obtain employment in Malaysia. The applicant's husband states that with the applicant's financial contributions, he is "experiencing a better quality of life" and without her income, they would not be able to afford a home and/or the new car they purchased." *Id.* The AAO notes that the applicant failed to submit any documentation regarding her and her husband's various financial responsibilities. The applicant's husband states he is attending bible college. *Id.* The AAO notes that it has not been established that the applicant's husband could not continue his studies in Malaysia. The applicant's husband states that he would suffer "mental anguish," if the applicant is removed from the United States. *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's husband's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. The AAO finds that the applicant has failed to establish extreme hardship to her United States citizen husband if he accompanies her to Malaysia.

In addition, the applicant does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment and continuing his college education. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. The applicant's husband's statements regarding the extreme hardship he would suffer if the applicant were not allowed to enter the United States were vague and not supported by documentation. Moreover, the United States Supreme Court has held that 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). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's United States citizen spouse will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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(a)(6)(C)(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.