



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 2007

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:

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 Director, California Service Center, 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 Guyana 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 seeking admission into the United States 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). The Director denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated July 17, 2006. Counsel submitted a timely appeal and additional evidence.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record conveys that the applicant admitted under oath at his interview for permanent resident status that he presented to U.S. immigration officials another person's passport so as to gain entry into the United States. The evidence in the record supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. By presenting to U.S. immigration officials another person's passport, the applicant sought to procure entry into the United States by fraud and the willful misrepresentation of a material fact.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 the bar to admission resulting from violation of section 212(a)(6)(C) 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 to the applicant and his children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's parents and wife who are naturalized citizens of the United States. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's father, mother, or wife must be established in the event that his father, mother, or wife joins the applicant; and in the alternative, that his father, mother, or wife remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains affidavits; income tax records; W-2 statements; wage statements; birth certificates; a marriage certificate; naturalization certificates; a letter from Welsh Business Consultants; a letter from [REDACTED], Attending Psychologist, Mt. Sinai Medical Center, and other documents.

The applicant's mother states the following in her affidavit. She suffers from Major Depressive Disorder. Her internist placed her on Noritryptlin to help her function, which has met with limited success. She has blackouts and periods of vision loss. She has extreme anxiety and fear about her son's future based on the conditions in Guyana, where there are life-threatening circumstances, especially for those coming from the United States, who, like her son, have no family or property in Guyana. Because of these conditions, she has

been unable to obtain employment and has severe difficulty functioning. *Affidavit from the applicant's mother, notarized on August 14, 2006.*

In a document notarized on January 8, 2004, the applicant's mother states that it would be an extreme hardship to her husband and herself and her two-year-old granddaughter if her son is deported. She states that they rely on him to support them as they approach retirement and he supports his daughter who he loves. The applicant's mother states that she knows her son is sorry that he used papers belonging to someone else to enter the United States.

In her affidavit the applicant's wife makes the following statements. She is a U.S. citizen and she and the applicant have two U.S. citizen daughters. She is employed but would not be able to sustain her employment and provide for their children as a single parent. They depend on the applicant for financial and emotional support. She and her children would suffer psychological, emotional, and economic hardship if her husband's waiver application is denied. *Affidavit from the applicant's wife, notarized on August 14, 2006.*

In the August 10, 2006 letter, [REDACTED] states that the applicant's departure from the United States would create an extraordinary hardship for his mother and a severe hardship for his wife and children. [REDACTED] states that the applicant's mother has a long history of Major Depressive Disorder, Not Otherwise Specified (DSM IV-TR-311) for which her internist placed her on medication to help her function. [REDACTED] indicates that the applicant's wife would not be able to handle the demands of raising two young children as a single parent; she would have difficulty maintaining employment and providing for their emotional and economic needs. [REDACTED] states that the applicant's wife depends on her husband's psychological and financial support.

The applicant and his wife were married on August 8, 2006. *The City of New York, Office of the City Clerk, Certificate of Marriage Registration.* The applicant was born on March 4, 1974; his wife was born on August 5, 1976. *Id.* They have a daughter who was born on January 26, 2002 in the United States. *Certificate of Birth, New York City Department of Health.* [REDACTED] the applicant's father (born on May 3, 1950); and [REDACTED], the applicant's mother (born on October 2, 1954), are naturalized citizens of the United States. *Certificate of Naturalization.*

The Ninth Circuit has stated that "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).

However, the fact that an applicant has a child born in the United States is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a

per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

There is insufficient evidence in the record to establish that the applicant's father, mother, or wife would endure extreme hardship if the waiver application is denied.

The record contains no evidence suggesting that the applicant's salary is required to meet the monthly household expenses of his parents or wife. The AAO notes that the documents in the record indicate that the applicant and his family live at the same address as his parents. The applicant's income tax records reflect his business earned \$8,000 in 2002, \$7,250 in 2001, and \$7,000 in 2000. The letter from Welsh Business Consultants states that the applicant's business earned \$97,185 for the period January 1, 2003 to October 2003, and [REDACTED] earned \$20,000 during the same period. The submitted income tax records and W-2 Forms reflect that the applicant's father earns nearly \$42,000 annually. The record has no documentation of the earnings of the applicant's wife. It has no documentation of the household expenses of his parents or wife. The submitted evidence is insufficient to establish that the applicant's parents or wife rely on his earnings.

Furthermore, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

[REDACTED] states that the applicant's mother has a long history of Major Depressive Disorder, Not Otherwise Specified (DSM IV-TR-311) for which she takes medication. There is no evidence in the record reflecting that [REDACTED] has been treating [REDACTED] for Major Depressive Disorder and there is no supporting evidence to substantiate her history of Major Depressive Disorder. 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)).

The applicant and his family are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the record. After careful consideration, it finds that the situation of the applicant's parents and wife, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by the applicant's

parents and wife is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra*. Thus, the factors needed to categorize hardship as extreme are unfortunately not present in this case.

The applicant's mother states that she is concerned about her son's future and the life-threatening circumstances in Guyana; however, she does not describe the "life-threatening circumstances" and how they relate to herself, her husband, and her daughter-in-law. There is no supporting evidence in the record to substantiate that the applicant's mother has a history of Major Depressive Disorder and that treatment for her condition is not available in Guyana.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.