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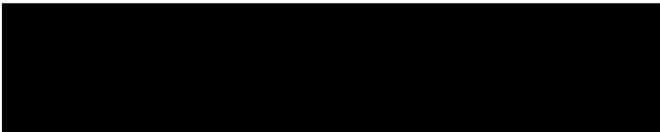
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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 District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be inadmissible to the United States pursuant to § 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. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the application accordingly. On appeal, counsel contends that the evidence submitted on appeal establishes that the applicant's wife would suffer extreme hardship if the applicant were removed, particularly in view of her medical condition and current disability. On appeal, counsel submits the following: a brief; an undated letter by a psychiatrist who treated the applicant's wife from for several months in 1999 and 2001; a prescription slip dated November 4, 2005 bearing the signature " [REDACTED] " stating that the applicant's wife is currently unable to work due to a chronic health problem; information about the applicant's wife's supplemental security income payments dated October 27, 2005; a computer print-out reflecting no child support arrangement, payments, or arrears on the part of the fathers of the applicant's stepchildren; tax and employment information for the applicant; an affidavit by the applicant's wife; and other documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of a passport in another person's name in order to procure admission into the United States on December 5, 1998. The applicant does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that hardship to the applicant's U.S. citizen stepchildren may be considered in this analysis only insofar as it affects the hardship experienced by his spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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 alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, These 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 566.

The BIA has held:

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).

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).

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). *Perez v. INS, supra*,

defined "extreme hardship" as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel asserts that the applicant's wife would experience extreme hardship if the applicant were removed and she remained in the United States in his absence. Counsel points out that the applicant's wife has a history of psychiatric problems and is currently disabled and cannot work. In her affidavit on appeal, the applicant's wife wrote that due to her psychiatric conditions, she is unable to drive and relies on the applicant for her and her family's transportation and financial support. The record includes documentation, as noted above, in support of these assertions. The AAO finds reasonable the assertion that the applicant's wife could face extreme hardship in the applicant's absence.

Counsel does not contend that the applicant's spouse would suffer extreme hardship as a result of relocating to Ghana to remain with the applicant. In an affidavit dated November 17, 2005, the applicant's wife wrote that although her children's fathers do not pay child support, it is unlikely that they would agree to her taking the children with her to Ghana to accompany the applicant. The record, however, contains no documentation regarding the children's fathers, other than that there appears to be no child support arrangement between them and the applicant's wife. There is no evidence upon which to base any conclusion regarding the ability of the applicant's stepchildren to relocate or the impact this might have on the applicant's wife. The AAO thus finds that the evidence fails to establish that the applicant's wife would suffer extreme hardship should she move to Ghana.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.