



U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES

Date: MAR 29 2007

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], was born in Kosovo, in the former Federal Republic of Yugoslavia. He 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 10, 2005.

On appeal, the applicant submits (1) a statement from his wife, [REDACTED] dated March 25, 2005, describing an injury she sustained at work in April 1999 and the resultant continuing pain and limitations to her movement; and (2) a letter to the U.S. Department of Labor from an orthopedic surgeon, dated August 6, 2002, confirming that the applicant's wife was injured at work in April 1999. The letter serves as a final evaluation of [REDACTED] work-related injuries and concludes that they are associated with repetitive bending and lifting at work, that she takes medication for lower back and intermittent leg pain, and that she should be provided with physician visits and medications as necessary. A final diagnosis was "mild to moderate stenosis . . . aggravated by work." The record also contains a statement by the applicant, dated December 9, 2002, explaining the circumstances of his departure from Yugoslavia in 1983 and entry as a refugee into the United States in 1984, and an "affidavit of hardship" from [REDACTED] dated December 3, 2003, stating that she and the applicant have a happy loving marriage and they do everything together, that they pay bills together and [REDACTED] takes her to work and to the doctor and takes care of her when she is sick. 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.

Section 212(i) of the Act provides:

(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 reflects that [REDACTED] misrepresented his name, country of origin and refugee claim to the U.S. Immigration and Naturalization Service in January 1984, and was granted admission to the United States on the basis of those misrepresentations. Thus, the applicant procured admission to the United States by fraud or

willfully misrepresenting a material fact. Accordingly, he was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). Mr. Keka does not contest his inadmissibility on appeal.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The record indicates that the applicant was born in the former Federal Republic of Yugoslavia in 1958. His wife was born in Cuba in 1952 and has been a U.S. citizen since 1967. They were married in 1999. [REDACTED] has worked for the U.S. Postal Service since 1986, earning a salary of \$43,664 annually as reported by her employer in a letter dated December 8, 2003. A joint tax return from 2002, the most recent in the record, shows an income earned of \$41,557 by [REDACTED] and no income earned by [REDACTED]

The AAO recognizes that [REDACTED] would suffer emotionally if she chose to remain in the United States separated from her husband. Separation from a spouse is a significant factor to be considered for purposes of an extreme hardship determination and it is not discounted. The record does not, however, indicate that any hardship she would suffer would be more severe than that of other spouses in the same situation. Moreover, although [REDACTED] refers to back pain as the result of her 1999 injury at work and the need for pain medication and that her husband takes care of her when she is sick, she has continued to maintain her employment and receive medical attention as necessary. There is nothing in the record to indicate that separation from [REDACTED] would change those circumstances. The record indicates that she is able to support herself and see that her medical needs are met. [REDACTED] could choose to relocate to Yugoslavia to avoid the hardship of separation. Absent information on country conditions in Yugoslavia and the affect of such conditions on the personal situation of [REDACTED] the AAO cannot conclude that any hardship she might experience as a result of such relocation would be extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is not granted a waiver of inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). 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 individuals who are deported. *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The record indicates that [REDACTED] would endure emotional hardship as a result of separation from her husband, but this hardship is not extreme, and there is no indication that such separation would cause her any financial or medical hardship. Her situation, based on the record, is not unusual or beyond what would normally be expected by individuals separated as a result of removal or inadmissibility.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.