



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



H2

FILE:



Office: CHICAGO, IL

Date: MAY 15 2007

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Lithuania who was found to be inadmissible to the United States (U.S.) 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 January 7, 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 district director concluded that the assertions and documentation provided by the applicant did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated January 13, 2005.

The AAO notes that the applicant's prior counsel, Thomas Hochstatter, withdrew his representation on January 17, 2007. *Letter from [REDACTED]*, dated January 17, 2007.

On appeal, prior counsel asserts that the unique, individual, and personal characteristics of this case distinguish it from the common case and result in a level of hardship to the applicant's spouse that is significantly more serious than the hardship faced by an average person facing a spouse's removal. *Counsel's Brief*, dated March 9, 2005.

The record indicates that on August 13, 2001 the applicant entered the United States as a visitor with an authorized period of stay until February 12, 2002. On January 7, 2002, the applicant filed to extend her stay as a B-2 nonimmigrant. On her application she falsely stated that she had not worked in the United States, when she had worked as a caregiver after her August 2001 entry.

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 Lithuania 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 Lithuania. Prior counsel states that the applicant's spouse is seventy years old, has lived in the United States his entire life, and has strong ties to his community. He has four children and seven grandchildren that live close to him. Counsel states that the applicant's spouse does not speak Lithuanian and considering his age and inability to speak the language would find it very difficult to find employment in Lithuania. *Counsel's Brief*, dated March 9, 2005. The record, however, contains no documentation to support these statements. The AAO notes that without documentary evidence to support the claims made, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the applicant's case, the only assertions made in regard to the applicant's spouse suffering extreme hardship as a result of relocating to Lithuania were made by counsel. Neither the applicant nor the applicant's spouse address the effect that relocation to Lithuania would have on him. Therefore, the AAO finds that the applicant has not shown that her spouse would suffer extreme hardship as a result of relocating to Lithuania.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel asserts that the applicant's spouse will suffer extreme emotional hardship as a result of being separated from the applicant. *Counsel's Brief*, dated March 9, 2005. The record indicates that the applicant was the caregiver for her spouse's terminally ill former wife. A few months after the wife's death the applicant and her spouse were married. Counsel states that the applicant's spouse was married to his first wife for 48 years and is emotionally dependent on having someone in his life. *Id.* In a psychological evaluation from Dr. [REDACTED], Psy. D., the applicant's spouse describes the applicant as an extremely neat person and very good housekeeper. He states that she cooks most of the meals and does all of the cleaning, vacuuming, dusting, laundry, ironing, grocery shopping, yard work and even shovels the snow and cuts the grass. *Psychological Evaluation*, dated March 7, 2005. He also states that they have an intimate relationship and when asked what he loves about the applicant he replied, "she is a worker...She wants to do good work...That's my work ethic...Very clean...Very neat." *Id.* In addition, to the psychological evaluation, the applicant also submitted three letters from friends of her and her spouse. All three letters attest to the applicant and her spouse having a loving relationship. *Exhibits C, D, and E.*

The applicant's psychological evaluation shows that the psychologist, Dr. Cushing, had a consultation with one of the applicant's attorneys and read the applicant's waiver application denial before interviewing the applicant and her spouse. The evaluation also shows that after the first interview on February 16, 2005, Dr. [REDACTED] had a second consultation with another one of the applicant's attorneys. The applicant and her spouse had a second evaluation on February 22, 2005. *Psychological Evaluation*, dated March 7, 2005. As part of his evaluation, Dr. [REDACTED] administered the following psychological testing: Minnesota Multiphasic Personality Inventory-2, Million Clinical Multiaxial Inventory-III and the Activities of Daily Living Questionnaire. Dr. [REDACTED] concludes that based on the results of this testing, once the applicant's spouse is left without support and is alone, he will be vulnerable to significant mood problems such as depression and anxiety. In addition, Dr. [REDACTED] found that the applicant's spouse is likely to have limited personal resources for coping with his problems and stress. *Id.* He states that if the applicant is removed, "it should be recommended" that the applicant's spouse undergo individual counseling to help him in coping with what he terms "extreme emotional hardship." Although the input of any mental health professional is respected and valuable, the AAO notes that Dr. [REDACTED] evaluation of the applicant's spouse was based on a total of two and one-half hours of interview. Accordingly, his findings do not reflect the insight and detailed analysis that characterize an established relationship with a mental health professional, and are, largely, speculative. Moreover, the AAO notes that Dr. [REDACTED] consulted with the applicant's counsel both before and during the course of his evaluation, thereby diminishing his report's value as an independent source in determining extreme hardship.

Furthermore, Dr. [REDACTED] conclusions are based on the assumption that if the applicant were removed, her spouse would be alone without a support system. The psychological evaluation and other documentation in the record do not support this assumption. The applicant's spouse states that he lives in the same town as his four children and seven grandchildren. He has four children: [REDACTED] 48 years old, married and residing in the same town as the applicant's spouse; [REDACTED] 46 years old, married with two children and also living in the same town; [REDACTED] 44 years old, married with five children; and [REDACTED] 42 years old, not married and the owner of the applicant's spouse's former businesses. *Id.* The record fails to show that the applicant's spouse's children would be unable or unwilling to care for and support their father in the absence of the applicant. Thus, the AAO finds that counsel has not established that her spouse would suffer extreme hardship as a result of being separated from the applicant.

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.