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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

MAY 22 2007

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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, California, 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 Germany who 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 procuring a visa or other document 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), for admission into the United States so as to reside with his naturalized citizen wife ([REDACTED]).

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and accordingly denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated December 22, 2004.

On appeal, counsel makes the following statements. The applicant, who has known [REDACTED] since 1990, married her on August 16, 2000 and thereafter filed the I-130 visa petition, application for legal permanent residency, in August or September of 2000. Prior to the filing of the petition, the applicant went to an attorney who, through an appointment with the Los Angeles District Office, obtained an I-551 stamp in the applicant's passport. The applicant does not recall the specifics of his visit. He did not understand that the stamp signified that he was a lawful permanent resident. Shortly after this incident, the applicant filed for adjustment of status through [REDACTED]. At an interview before an immigration officer, the applicant stated that he had already received an alien resident card, and the immigration officer stated that it had been issued in error. The applicant had received the alien resident card following the filing of the I-130 petition, adjustment of status application, and request for advance parole. He had no reason to assume that the alien resident card was not associated with the documents filed by his wife, [REDACTED]. The director's denial letter fails to state the specific provision of the Act violated by the applicant. There is no misrepresentation or fraud by the applicant. He received the I-551 stamp so that he would be able to travel. His good faith effort to obtain legal permanent residency is shown by his application for legal permanent residency in 2000 based on his marriage to [REDACTED]. This is supported by the director's decision to admit the applicant after his application had been received, reviewed, and approved by the district director. The applicant's wife would endure extreme hardship if the waiver of inadmissibility is not granted.

Counsel asserts that the director's denial letter fails to state the specific provision of the Act violated by the applicant. Although the AAO finds that the director's decision did not indicate the exact provision of the Act violated by the applicant, it finds that the specific facts referenced by the director establish inadmissibility of the applicant pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Specifically, the director stated that the applicant had been readmitted to the United States on May 4, 2000 as a permanent resident of the United States and that the admission was based on his alien resident card from a prior marriage that had terminated years before; and that in 1993, the applicant admitted in a sworn statement that his permanent residency in the United States terminated and he did not have a right to reside here. Thus, the director found the applicant inadmissible based on facts establishing a misrepresentation in connection with procuring an alien resident card and gaining admission to the United States by way of it.

The AAO notes that the applicant was clearly ineligible for the I-551/alien resident stamp that was issued to him on April 19, 2000. The origins of the I-551/alien resident stamp are unknown. If the I-551/alien resident stamp was issued to the applicant based on his prior marriage, the applicant must have provided false

information in order to obtain it. If the I-551/alien resident stamp was not legally issued, then the applicant obtained a counterfeit I-551/alien resident stamp.

The AAO will now address whether the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as determined by the director.

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 applicant stated that he became a lawful permanent resident in 1980 based on a marriage to [REDACTED] that eventually ended in 1984. *Declaration of [REDACTED] executed February 17, 2005.* The applicant stated that in 1987 he traveled to Germany, staying there for three years, and as a consequence of this, his permanent resident status terminated. *Id.* He stated that he was issued an I-551 stamp in his passport on or about April 19, 2000, which allowed him to travel for one year. *Id.* The applicant stated that he used the I-551 stamp on May 4, 2000 and on September 10, 2000. *Id.* On September 9, 2001, [REDACTED] filed the I-301 and adjustment of status application on his behalf. At the same time, the applicant stated that he applied for and was issued advance parole, which he used for subsequent travel. *Id.* The applicant stated that he received an alien resident card some time after the filing of the documents by N [REDACTED] and that he believed that the alien resident card was connected with that filing. *Id.* He stated that "I realize now that it was wrong to use the stamp in my passport, and I apologize, it has been very important to me to establish permanent residency in the United States." *Id.*

The AAO finds that the record establishes that the applicant committed a material misrepresentation in connection with an application for visa or other documents and with entry into the United States. The applicant obtained an I-551 stamp in his passport on April 19, 2000, and used it for admission into the United States on two separate occasions. The record reflects that the applicant was not legally entitled to lawful admission for permanent residence status. The record reflects, as determined by the director, that on May 10, 1993, the applicant admitted in a sworn statement that he did not qualify for a "green card" and that he did not have a right to reside in the United States; he could only visit. The AAO finds that had the applicant disclosed to immigration officials his divorce to [REDACTED] and the termination of his permanent resident status based on abandonment of residence, he would not have been issued lawful admission for permanent

resident status and instead would have been found unlawfully present in the United States. The AAO therefore finds unpersuasive counsel's assertion that the applicant committed no misrepresentation or fraud.

The applicant's effort to obtain lawful permanent residency through [REDACTED] and the decision by the district director to approve the applicant's advance parole based on a pending application to adjust status, do not erase the fact that he made a material misrepresentation on April 19, 2000 in order to obtain lawful admission for permanent residence status. The AAO therefore finds the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Now, the AAO will address whether the record establishes that a waiver of inadmissibility is warranted pursuant to section 212(i) of the Act.

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 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 wife. 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). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) lists the factors that 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.

It is noted that extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant abroad, and in the alternative, that he or she remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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).

U. S. courts have 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 from one’s spouse will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO disagrees with counsel’s contention that the district director abused his discretion by failing to support his reasons in denying the waiver application. The district director supported his denial of the waiver application by reference to the submitted evidence. In reviewing tax records, the district director found that the applicant’s wife listed herself as “head of household” and the applicant listed himself as “single” on the tax returns for the years 2000, 2001, and 2002; and that the applicant used a different address of residence on his tax returns from that of his wife. The district director indicated that the tax records revealed that [REDACTED] had worked and supported herself and her daughter, despite her medical problems. Lastly, the district director indicated that Germany is a peaceful country and has comparable medical care.

The evidence in the record includes affidavits of the applicant and his wife, medical records pertaining to [REDACTED], and other documents.

In his affidavit, the applicant makes the following statement. He married [REDACTED] on August 10, 2000 and has known her since 1990. His wife had a heart attack in August of 2003 and had stents implanted in arteries of her heart on September 2, 2003. His wife has heart disease and diabetes, is under the care of a cardiologist, and is required to take a large number of prescription drugs such as Metoprolol Tartrate, Gemfibrozil, and Plavix. She continues to operate her restaurant through managers. He cares for [REDACTED] and tries to relieve her of physical tasks around the house, especially heavy lifting. He cooked and cleaned the house during her six-month convalescence, took her to doctor’s appointments, and filled her prescriptions and make sure that she took her medicine. He loves his wife and is committed to her, and continues to do the household duties and support her with her diet and medication regime and doctor’s visits. His wife is stressed about his situation and was taken to the hospital on February 7, 2005 because of highly elevated blood sugar. He has no real means of obtaining employment in Germany and earning an income as he has reached the mandatory retirement age of 65. His prior work in Germany was insubstantial and that he was self-employed. He does not qualify for a pension or social security in Germany and that his wife will have to send him money to support him, and that she will incur financial costs to stay in contact with him. His wife does not speak German and that joining him in Germany will be a disaster for her health and financial well-being. She might not be able to establish residency and obtain employment authorization in Germany within a reasonable time. She will only be able to obtain catastrophic care from the German

government in the event of an emergency. Her Kaiser Permanente insurance will not cover healthcare overseas and that she will lose income from her U.S. business that pays for her insurance. If her insurance coverage is interrupted, she will not get new coverage in the event that she returns to the United States due to her diagnosis of heart disease and diabetes. If she is not able to run the restaurant in Los Angeles from Germany, they will be left penniless in Germany. *Declaration of [REDACTED] executed February 17, 2005.*

In her affidavit [REDACTED] states that she had a heart attack she has relied on her husband for love and support and as her primary caretaker. She states that her husband cleans, cooks, repairs the house, helps her fill prescriptions, and performs tasks requiring physical exertion. She states that she visits the cardiologist monthly, and her husband accompanies her on those visits. [REDACTED] expresses that she will greatly miss her husband's daily support and assistance if he departs to Germany. In general, she makes the same assertions as stated by her husband in his declaration dated February 17, 2005. *Declaration of [REDACTED] executed February 17, 2005.*

In an affidavit dated November 9, 2004, [REDACTED] stated that if her husband were to leave the country she would be left all by herself. She states that she is a diabetic and recently had a heart attack. She states that she depends on her husband to be there for her and that they have been legally married since 1997, but have been together for 14 years so she would miss him dearly seeing as how he has been her companion for so long. *Affidavit of [REDACTED], dated November 9, 2004.*

The applicant indicates that he will be unable to find employment in Germany due to his age. In support of this assertion, the record contains an article about Germany facing a pensions dilemma. The article conveys that Germany's mandatory retirement age is 65 and that only one-third of German men between 60 and 65 are still on the job. It is noted that the applicant states that his prior work in Germany was insubstantial and that he was self-employed. However, the applicant provides no information pertaining to his prior self-employment in Germany. Consequently, there is no documentation in the record to support his assertion that he will not be able to support himself and his wife in Germany and will not be able to continue to pay her Kaiser Permanente insurance or obtain comparable health insurance in Germany. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

It is noted that the record contains information relating to the applicant's employment in the United States for the years 2001 and 2003. His Form 1040 for 2001 reflects total income of \$46,883; ownership of residential rental property in Los Angeles, California; and sale of residential rental property in the amount of \$1,018,500 with the cost basis of \$741,171, and gains of \$277,329. The Form 1040 for 2003 reflects \$100,559 in gross receipts or sales from [REDACTED] and the sale in interest in vacant land with a gain of \$20,872. The record also reflects deposits to accounts in Germany in the amounts of \$119,982 and \$14,982. *Account Statement dated February 20, 2001.* It reflects withdrawals from accounts in Germany in the amounts of \$120,000 and \$119,958. *Account Statement dated March 19, 2001.*

Counsel asserts that *Matter of Liao*, 11 I&N Dec. 113, 116 (BIA 1965) and *Matter of Koojoory*, 12 I&N Dec. 215, 219 (BIA 1967) indicate that conditions of the country to which the alien and his or her family will be returning are relevant in determining hardship. The record establishes that [REDACTED] has serious health problems. However, there is no evidence reflecting that her health problems require medical treatment not

available in Germany. There is no corroborating evidence reflecting that she might not be able to establish residency and employment authorization in Germany. There is no evidence showing that she must speak German in order to financially support herself in Germany. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Counsel cites to *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980) and asserts that the hardship of uprooting, cultural shock, forced liquidation of business and home, substantially diminished educational and economic opportunities, and the improbability of immigrating to this country legally must be considered. Counsel further asserts that *Prapavat* indicates that a person's inability to immigrate to the United States by any other means, and its impact upon the relatives remaining behind, is a hardship consideration.

The AAO has no doubt that [REDACTED], if she decides to join her husband, will experience uprooting and cultural shock. She may also decide to sell her business and home. 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. Thus, the AAO finds that uprooting to Germany and the cultural shock of living in a foreign country do not rise to extreme hardship as such hardships are normally to be expected in moving to a foreign country. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA finding that petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute extreme hardship. In addition, in *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) the Supreme Court upheld the BIA finding that economic detriment alone is insufficient to establish extreme hardship.

It is noted that *Prapavat* is a suspension of deportation case, which is a case type that requires considering whether there are other means to adjust status in the United States. A hardship determination under section 212(i) of the Act, 8 U.S.C. § 1182(i), which is presented here, does not require determining whether the applicant has other avenues in which to immigrate to the United States legally.

[REDACTED] has not indicated that she will be unable to financially support herself if she does not join her husband in Germany. The record conveys that [REDACTED] supported herself and her daughter in 2003. *Form 1040 for 2003*. She managed apartments, operated a real estate business, and sold real estate (3 [REDACTED]). *Form 1040 for 2003*. The AAO notes that the applicant indicates that his wife "continues to operate her restaurant business with the help of capable managers." *Declaration of [REDACTED] executed February 17, 2005*.

It is noted the submitted income tax records reflect that the restaurant [REDACTED] is owned by the applicant. *Form 1040 for 2003*. The Form I-864 indicates that [REDACTED] is self-employed at the [REDACTED].

[REDACTED] and her husband contend that she will be required to financially support her husband if he moves to Germany. As previously stated, because the applicant submitted no information relating to his self-employment in Germany, the record contains no documentation to support his assertion that he will not be able to support himself there. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, the submitted income tax records reflect that the applicant has real estate and business

investments in the United States and bank statements reveal that he maintains accounts in Germany. This evidence strongly suggests that the applicant derives an income from various sources.

Counsel asserts that [REDACTED] will suffer hardship that is beyond the typical results of separation between family members if the applicant is not allowed to live in the United States. The record contains affidavits from the applicant and his spouse attesting to the care he has provided for her. The AAO is mindful of and sympathetic to the emotional hardship the applicant and his wife will endure as a result of separation from a loved one. The AAO finds that [REDACTED] situation, if she remains 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 based on the record. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Court of Appeals 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. The record before the AAO is insufficient to show that the emotional hardship endured by [REDACTED] is unusual or beyond that which is normally to be expected upon deportation. Furthermore, the AAO notes that the record reflects that [REDACTED] has a son and daughter residing in the United States; she will therefore not be alone in the country if separated from her husband. Moreover, her husband indicated that she is able to continue working with the help of her managers.

On appeal, counsel discusses the "extreme hardship" standard in *Ramos v. INS*, 695 F.2d 181 (5th Cir. 1983)(consider relevant hardship factors in the aggregate, rather than in isolation in determining whether extreme hardship exists) and *Hernandez-Corero v. INS*, 783 F.2d 1266, 1269-1270 (5th Cir. 1986)(the cumulative effect of many hardships, each deemed not in itself sufficient, may make their total weight extreme); the standard for exercising agency discretion in *Yehdego v. INS*, 159 F. 3d 429 (9th Cir. 1988)(in balancing factors, weigh favorable and unfavorable by evaluating all of them, assigning weight or importance to each one separately and then all of them cumulatively); and the "humanitarian approach" of the Foreign Affairs Manual.¹

As previously stated in this decision, the BIA has stated that the factors to consider in determining whether extreme hardship exists provide a framework for analysis, and that the relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. 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. *Matter of O-J-O*, *supra*, (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994). Thus, the AAO agrees with counsel in that the hardship factors are considered both individually and in the aggregate in determining whether extreme hardship exists in a case.

Thus, 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

¹ Counsel cites to the *Foreign Affairs Manual* section 40.63, N1.3 and section 40.301, N1.

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 deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation 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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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

ORDER: The appeal is dismissed.