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FILE:

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Office: CHICAGO, IL

Date:

NOV 27 2007

IN RE:

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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.

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 India 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 having procured admission into the United States by fraud or willful misrepresentation on December 13, 1994. The applicant is married to a lawful permanent resident and has two U.S. citizen children. She 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 applicant had not established that her husband and children would suffer extreme hardship as a result of her inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated October 12, 2005.

On appeal, counsel asserts that the district director's rationale for denying the applicant's waiver misreads Congress' intent in providing the waiver. He also states that because the applicant did not sign the sworn statement where she allegedly admitted to her misrepresentation, the district director cannot find that she made such a misrepresentation. He then asserts that even if the applicant made a misrepresentation concerning her identity, the materiality of that misrepresentation remains in doubt and that the applicant has shown that her spouse and children would suffer extreme hardship as a result of her inadmissibility. *Counsel's Brief*, dated November 11, 2005.

The record indicates that on December 13, 1994, the applicant presented an Indian passport and visitor's visa in the name of [REDACTED] in an attempt to gain entry into the United States. The AAO notes that the applicant was questioned by an immigration inspector at [REDACTED] airport in New York City upon her arrival to the United States. Initially, the applicant refused to sign her sworn statement in regards to this questioning. Later the applicant's statement was reopened. The applicant was advised that she was still under oath and the reopened statement was signed by the applicant and notarized. *Sworn Statement*, December 14, 1994. During the second round of questioning, the applicant stated that her correct name was [REDACTED] (a false name), that her brother-in-law purchased the passport for her and that the photographs on the passport and visa were not photographs of her. *Id.*

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.

Counsel contends that the applicant's misrepresentation of her identity has not been established as material. *Brief in Support of Appeal*, dated November 11, 2005. Counsel states that for the applicant to be found inadmissible under section 212(a)(6)(C)(i) of the Act, her misrepresentation must be: (1) a misrepresentation of fact; (2) that is material; and (3) made willfully.

The AAO notes that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a 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 result in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The AAO finds that the applicant misrepresented her identity to immigration officials in order to procure the benefit of entry into the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to him or her, and whether any United States government agencies possess information that would have a bearing on the applicant's admissibility, e.g., records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented her identity, she cut off these material lines of inquiry. Specifically, the inspecting officer was unable to determine whether the applicant possessed valid entry documents of her own or whether the United States possessed information that had a bearing on the applicant's eligibility for entry.

Counsel suggests that the applicant's misrepresentation may not have been material because the record only shows that the applicant presented a fraudulent passport. The AAO notes that the applicant made this misrepresentation in order to gain admission to the United States. Once she revealed to the inspecting officer that the passport in her possession was not hers, the applicant was refused admission due to her lack of valid entry documents. Thus, the applicant misrepresented her identity to gain a benefit under the Act and such misrepresentation was material. The applicant has not established that she was erroneously deemed 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 or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 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). 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 India 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 record of extreme hardship includes: a statement from the applicant’s spouse, the applicant’s marriage certificate, the applicant’s children’s birth certificates, the approval notice for Petition for Alien Worker (Form I-140) benefiting the applicant’s spouse, the applicant’s spouse’s certified Form ETA 750, a paystub for the applicant and copies of the applicant’s health insurance card showing coverage of the applicant’s family.

The applicant’s spouse states that he and the applicant have two children together who were born in the United States and who have lived their entire lives in the United States. *Spouse’s Statement*, dated June 16, 2005. He expresses concerns for his children’s health if they returned to India, stating that his son contracted Hepatitis A during a previous trip to India. *Id.* The applicant’s spouse explains that the applicant is employed and through her employment the family receives health insurance. He states that, if the applicant is removed from the United States, the family will lose their health insurance as well as suffer emotionally and psychologically from her absence. *Id.* In addition, the applicant’s spouse states that he has no family members who live in India and that if the applicant is forced to return to India, she would have no job opportunities and that the emotional and psychological impact of being separated from her family would devastate her. *Id.*

The AAO notes that the applicant has submitted no supporting documentation regarding the hardship statements made by her spouse. Although the applicant has submitted evidence that the family’s health

insurance is currently provided through her employment, she has not demonstrated that her spouse could not acquire acceptable health care coverage for the family through his own employment. Neither has she submitted any evaluations from a licensed health care professional that would establish the emotional and psychological suffering claimed by her spouse. 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)).

On appeal, counsel also contends that the applicant's spouse would face extreme hardship were he to relocate to India. Counsel asserts that the applicant's spouse has no family in India and that he would face poverty if he relocated to India with his wife. The record, however, offers no documentary evidence that would support either claim. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the applicant's burden of proof in this proceeding. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). Thus, the current record does not establish extreme hardship to the applicant's spouse as a result of her inadmissibility.

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.