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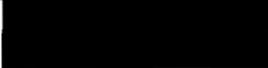
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: MEXICO CITY (PANAMA CITY)

Date:

APR 04 2008

IN RE:

Applicant:



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, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Columbia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 21, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

In the Record of Sworn Statement dated March 2, 2001, the applicant admitted that his purpose in using the Transit Without Visa program was to enter the United States and apply for asylum.

In *Ymeri v. Ashcroft*, 387 F.3d 12, (1<sup>st</sup> Cir. 2004), the court states that an alien who transits through this country as a transit without visa participant has obtained a benefit under the immigration laws, which is the privilege of traveling as transit without visa participants. *Id.* at 19.

Here, the AAO finds that the applicant's admission under oath that he did not intend to use the Transit Without Visa program to continue his journey to Madrid, as shown by his onward ticket, but instead used the devise solely to gain admission into the United States in order to apply for asylum, supports the finding that the applicant willfully misrepresented a material fact, his true intention, in order to gain admission into the United States or other benefit provided under the Act. Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen 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, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors 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 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

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).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains sworn statements; letters; birth and marriage certificates; photographs; airline boarding passes, passenger receipts, and invoices; and other documents.

In the May 16, 2005 letter, the applicant's fiancée, who is a licensed physical therapist in New York, states that she wishes to have the applicant, who she met three years ago, back in the United States. She states that they have a strong bond and plan a future wedding. She indicates that she and the applicant are honest people who want to build a solid union in the United States. She states that all of her family, her mother, siblings, and nephews, live in the United States and it would be impossible to return to Columbia. She states that her mother, who is old, would suffer if she returns to Columbia, and that her family has a close relationship. She states that she and the applicant plan to wed in the United States in 2005.

The letter of the same dated by the applicant conveys that he made a mistake in entering the United States when he was supposed to go to Spain. He states that the time he spent in the United States allowed him to meet his future wife and attend one semester of plumbing school.

The undated statement by the applicant's fiancée states that it has been three years since she has been with the applicant. She states that her days and weekends are a nightmare, she is depressed without her fiancé, and she talks to her priest about it. She states that they will marry in Columbia because she cannot hold this situation any longer. She conveys that she has lost weight and cannot sleep at night and that she must stay healthy for her job.

The letter dated April 4, 2006 by the parochial vicar with Corpus Christi Church states that the applicant's fiancée has been saddened and depressed by her long separation from the applicant and that the applicant's fiancée who has resided in the United States since 1982, must continue to live in the United States because of her profession, her elderly mother, and her family members.

The April 3, 2006 letter by the deacon of the Corpus Christi Church commends the applicant's character. The deacon states that the applicant was integrated into the community, helping his fiancée with projects at the church such as basketball games. The deacon states that he has been called upon by the applicant's fiancée many times due to her depression caused by separation from her fiancé.

The record reflects that the applicant married his fiancée, [REDACTED], on April 18, 2006, and that she is supporting him while he is in Columbia.

The record fails to establish that the applicant's wife would endure extreme hardship if she remained in the United States without him.

The applicant's wife makes no claim of extreme financial hardship if she were to remain in the United States without the applicant.

With regard to family separation, courts in the United States have stated that "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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's wife is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

In addition, the emotional hardship of the applicant's wife should be weighed against the fact that prior to the marriage to the applicant she was aware that he had been denied entry into the United States. *Matter of Cervantes*, 22 I&N Dec. 560, 567 (BIA 1999), indicates that it is relevant to consider whether the applicant's spouse married the applicant after removal proceedings began. The court stated that:

[T]he respondent's wife knew that the respondent was in deportation proceedings at the time they were married. In contrast to the respondent's assertions on appeal, this factor is not irrelevant. Rather, it goes to the respondent's wife's expectations at the time they were wed. Indeed, she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. In the latter scenario, the respondent's wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent's argument that his wife will suffer extreme hardship if he is deported.

(citations omitted).

Here, the applicant's wife was aware at the time she wed that the applicant had been denied entry into the United States and that, in the event that he was not allowed entry into the country, she might be faced with the decision of parting from him or following him to Columbia. In the latter scenario, the applicant's wife was also aware that a move to Columbia would separate her from her family in the United States. The applicant's wife has a difficult choice to make. However, it is choice that confronted her well before her marriage to the applicant. The AAO therefore finds that in marrying the applicant with this awareness, the claim by the applicant's wife, that she will suffer extreme hardship if her husband's waiver application is not granted, is greatly diminished.

The record is insufficient to establish that the applicant's wife would endure extreme hardship if she joined the applicant in Columbia.

The applicant's wife is concerned about separation from her family in the United States. Courts in the United States have held that separation from one's family need not constitute extreme hardship. In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. And in *Dill v. INS*, 773 F.2d 25 (3<sup>rd</sup> Cir. 1985), the Third Circuit affirmed the finding of no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA found the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

Although the parochial vicar with Corpus Christi Church states that the applicant's wife must continue to live in the United States because of her profession, no documentation has been submitted to establish that the applicant's wife would be unable to find employment in Columbia.

U.S. court and BIA decisions have held that difficulties in obtaining employment in a foreign country are insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

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 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 removal.

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

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.