

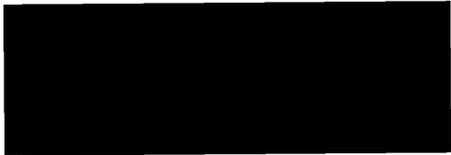
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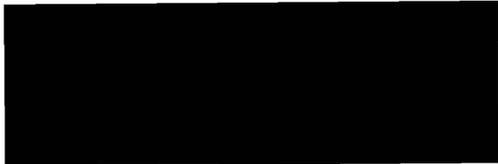


FILE:  Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2008**

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:



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 Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 52-year-old native and citizen of Guyana who was found 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). The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative petition filed on her behalf by her spouse. She presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States.

The director determined that the applicant was inadmissible, and that she was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to her U.S. citizen spouse. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that her departure would result in extreme hardship. She submits a sworn statement executed by her husband and a psychologist's opinion letter.

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.

8 U.S.C. § 1182(a)(6)(C)(i). The director found the applicant to be inadmissible based on her fraudulent use of a photo-switched passport to gain admission to the United States. The applicant admits that she gained admission to the United States using a fraudulent passport. *See* Sworn Statement by Applicant, dated December 23, 2002. The AAO therefore affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the

applicant herself is not a permissible consideration under the statute. Hardship to an applicant's step-children is also not a relevant consideration, except as it creates hardship upon the applicant's spouse.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

The applicant's spouse, Nankumar Hariprashad, is a 51-year-old native of Guyana who has resided in the United States since 1992. He became a U.S. citizen upon his naturalization on September 17, 2002. The couple was married in 1997, in Queens, New York. The applicant's spouse has three adult children from a previous relationship. The applicant's spouse states that he suffers from gout and has difficulty walking and standing. *See Applicant's Spouse's Statement*. He further states that he and his children depend on the applicant for emotional and financial support. *Id.* He claims that the applicant "earns the majority of [their] income." *Id.* [REDACTED] a psychologist, opined that the applicant's departure from the United States would result in extreme hardship to the family. *See Opinion Letter of [REDACTED]* She explained that the applicant's spouse is not well-employed due to his lack of education and that his work (at Home Depot) "is extremely isolating." *Id.* She further states that the applicant's spouse's father and brother have passed away, and that he therefore lacks their financial and emotional support. *Id.* She notes that the applicant's spouse has developed gout, and can be "totally dependent" on the applicant when facing an acute episode. *Id.* She also mentions the applicant's step-son who is a full-time student. *Id.* Lastly, [REDACTED] states that the applicant's spouse may develop Major Depressive Disorder because of the applicant's departure. *Id.*

The AAO notes that the application is not accompanied by any medical records relating to the applicant's spouse's medical condition and treatment. The AAO further notes that the financial information in the record, which consists of the couple's income tax returns, indicates that the applicant's spouse earns about \$21,000 per year. The record does not contain any evidence of the applicant's employment. The record suggests that the applicant and her spouse own their home, but it does not indicate whether the applicant's three step-sons reside with the couple and what, if any, financial contribution they make to the household.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. The record does not contain any evidence establishing that the applicant's spouse's medical condition could not be adequately treated, that his sons could not provide financial and emotional support, or that treatment for the condition is unavailable in Guyana. The record also does not establish that the applicant's spouse's medical condition is life-threatening, chronic, unusual or severe. The AAO notes that the record suggests that the applicant is employed, and is not solely dependent on the applicant for financial support. The record indicates that the applicant's spouse would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme.

The AAO further notes the applicant's spouse does not indicate whether he would relocate to Guyana should the applicant be removed there. In this regard, the AAO first notes that the statute does not require the applicant's spouse to relocate. Moreover, the AAO notes that there is no evidence in the record suggesting that the applicant would face extreme hardship should he relocate to Guyana. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.