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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEWARK, NJ

Date:

AUG 19 2008

IN RE:

[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.

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 Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uzbekistan 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 an immigration benefit through fraud or willful misrepresentation. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the record did not establish that the applicant's spouse would suffer extreme hardship if she were removed from the United States. She denied the application accordingly. *Decision of the Field Office Director*, dated August 8, 2007.

On appeal, counsel states that the district director erred by failing to follow controlling precedent on the relevant factors in determining extreme hardship, failed to give due weight to the presumption in favor of maintaining family unity, improperly discounted an expert psychological evaluation and failed to assess the impact of country conditions adequately. *Form I-290B, Notice of Appeal or Motion*, dated September 5, 2007. Although counsel indicates on the Form I-290B that he will submit a brief and/or additional evidence to the AAO within 30 days, no additional documentation was found in the record. Accordingly, on August 8, 2008, the AAO contacted counsel and requested any materials he had submitted in support of the appeal during the period indicated on the Form I-290B.

On August 13, 2008, counsel responded with a brief dated August 12, 2008, and new and previously submitted documentation. Although the AAO's request indicated that it sought only those materials provided by counsel within the 30-day period following the filing of the Form I-290B, it will, nevertheless, consider counsel's April 12, 2008 brief and the additional evidence he has now provided. With this additional documentation, the evidence of record is complete.

The record indicates that on March 18, 2001, the applicant entered the United States as a nonimmigrant visitor and that she subsequently filed a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which was approved on January 29, 2002. Thereafter, it was determined that the Form I-20 submitted on behalf of the applicant was fraudulent, as evidenced by the forged signature of the school official in whose name the applicant's qualifications and course of study were certified. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured an immigration benefit through fraud or willful misrepresentation.

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 a qualifying family member. In the present case, the only qualifying relative is [REDACTED] the applicant’s spouse. Hardship the alien herself experiences or that is felt by other family members as a result of separation is not considered in section 212(i) waiver proceedings, except as it affects the applicant’s spouse. Should the record establish that Mr. [REDACTED] would experience extreme hardship, it will be 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 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 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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 AAO notes that the applicant must prove that [REDACTED] would experience extreme hardship whether he relocates to Uzbekistan or remains in the United States without the applicant, as he is not required to reside outside the United States based on the denial of the applicant’s waiver request.

Before considering the record with respect to the applicant’s claim related to extreme hardship, the AAO will address the applicant’s assertion, stated at the time that she filed the Form I-601 and, again, on appeal, that she was unaware that the Form I-20 submitted on her behalf was fraudulent. In statements, dated May 28,

2005 and May 31, 2007, the applicant asserts that a previous counsel from whom she had sought assistance to obtain a student visa prepared the Form I-20 for submission to the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and that she had no knowledge of what documents he provided on her behalf, other than the letter of acceptance she received directly from Union County College. To explain her failure to attend Union County College after receiving approval of the Form I-20, the applicant indicated that, following the receipt of her student visa, she married her second husband who was abusive and who forbade her to enroll in classes. To save her marriage, the applicant states, she did not enroll in school. The applicant reports that, although she tried to contact her prior legal representative when she was notified that her Form I-20 was fraudulent, his telephone had been disconnected and he was no longer at his previous address.

While the AAO notes the applicant's assertions regarding her ignorance of any fraud connected with the submission of the Form I-20 visa application, evidence in the record disputes her claims. The applicant has disavowed knowledge of what documentation was submitted in connection with her student visa application, with the exception of the letter of acceptance that she received directly from Union County College and, then, gave to her previous representative. The record, however, contains a November 19, 2002 letter from the Director of Admissions/Records/Registration at Union County College that identifies the applicant as one of a group of five individuals for whom approved Form I-20s had been received, but who had never applied for admission to the college. In light of the statement from the Director of Admissions that the applicant never applied for admission to Union County College, the applicant's assertion that she personally received Union County's letter of acceptance is not plausible and undermines her claim that she was unaware that the student visa application filed to allow her to attend Union County College was fraudulent. Moreover, the AAO notes that the Form I-20 submitted by the applicant was approved on January 29, 2002, eight months prior to her October 2, 2002 marriage to her second husband who, the applicant asserts, prevented her from enrolling in classes. The applicant, however, has submitted no evidence that indicates she sought to enroll at Union County College during the months that preceded her marriage, even though she had been notified of the approval of the Form I-20. The AAO notes that the applicant in her May 28, 2005 statement indicated that, as she was living in Brooklyn at the time the Form I-20 was approved, attending Union County College was not convenient for her.

Based on its review of the record, the AAO finds that the applicant has not established that she was unaware of the fraudulent nature of the Form I-20 submitted on her behalf. Accordingly, she is subject to the ground of inadmissibility in section 212(a)(6)(C)(i)(I) of the Act and must seek a waiver of that inadmissibility under section 212(i) of the Act based on extreme hardship to her spouse.

The record includes the following evidence to establish the applicant's claim that [REDACTED] would suffer extreme hardship if she were to be removed from the United States: counsel's brief, dated August 12, 2008; a sworn statement from [REDACTED], dated May 31, 2007; a psychological evaluation of [REDACTED] prepared by [REDACTED], [REDACTED] a licensed psychologist in New Jersey; an excerpt on adjustment disorders from the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, American Psychiatric Association; a letter from [REDACTED], dated May 15, 2007; a letter from Dr. [REDACTED] dated May 15, 2007; 2005 and 2006 tax returns filed jointly by the applicant and Mr. [REDACTED] 2007 and 2008 travel warnings issued for Uzbekistan by the Department of State; a 2007 State Department Consular Information Sheet on Uzbekistan and a Country Specific Information report on

Uzbekistan from 2008; the discussion on Uzbekistan from the 2007 *Country Reports on Human Rights Practice*, published by the Department of State; 2005 and 2006 U.S. Agency for International Development (USAID) budget reports for Uzbekistan; a 2007/2008 Human Development Report on Uzbekistan prepared by the United Nations Development Programme; and the section on Uzbekistan from *The World Fact Book*, published by the Central Intelligence Agency, updated as of August 7, 2008.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Uzbekistan. In his statement, [REDACTED] indicates that he has lived his entire life in the United States and that his job, his only source of income; his family, including an elderly father; and his doctors are in the United States. [REDACTED] also asserts that he does not speak the language of Uzbekistan and would be unable to provide for himself there. He further contends that it is doubtful that he would be permitted to remain in Uzbekistan with the applicant, even if he were to attempt to relocate with her. Supporting [REDACTED] statement are letters from two doctors who provide him with medical care. [REDACTED] indicates that [REDACTED] was treated for a malignant tumor in his right thigh in 1999, which has a high potential for recurrence. Although [REDACTED] finds no evidence of recurrence as a result of a May 15, 2007 examination, he indicates that clinical surveillance is needed and that [REDACTED] should have periodic examinations. The letter from [REDACTED] indicates that, in 2007, [REDACTED] was diagnosed with a calvarial lesion in the left occipital region of his brain resulting in moderate to severe headaches. [REDACTED] reports that [REDACTED] is receiving intravenous infusions of magnesium sulfate on a weekly basis and has been advised to continue this medical regimen.

To establish the conditions that [REDACTED] would face if he were to relocate with the applicant, the record offers a range of evidence from the Department of State, including travel warnings for Uzbekistan issued on April 25, 2007 and July 3, 2008; a consular information sheet, dated May 7, 2007; a country specific information sheet, dated June 30, 2008; and USAID budget reports for 2005 and 2006. As demonstrated by the travel warnings and the consular information/country specific information sheets, U.S. citizens traveling or resident in Uzbekistan risk harm from terrorist attacks or civil unrest. Further, the medical care available in Uzbekistan is well below Western standards and individuals with pre-existing health problems must contend with inadequate medical facilities and face severe shortages of medical supplies. The Department of State reports that most Americans living in Uzbekistan travel home or to Western Europe for their medical needs.

When viewed in the aggregate, [REDACTED] ties to the United States, his inability to speak the Uzbek or Russian languages, the documentation of his health concerns and the country conditions he would face in Uzbekistan are sufficient to establish that relocation to Uzbekistan would constitute an extreme hardship for him.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In his statement, [REDACTED] contends that he cannot live in the United States without the applicant. Prior to meeting the applicant, [REDACTED] states he had experienced a very painful divorce, which resulted in his estrangement from his children; was drinking heavily; had been treated for a malignant tumor in his thigh, which he was informed had a high incidence of recurrence and was suffering from migraine headaches. It is because of the applicant's presence in his life, [REDACTED] asserts, that he has moderated his use of alcohol and gotten treatment for his migraine headaches. He also reports that the applicant assists him in caring and providing companionship for his elderly father and has

helped heal his relationship with one of his estranged children. Without the applicant, [REDACTED] contends, he would not be able to maintain his physical and mental health.

A confidential psychological evaluation prepared by [REDACTED] finds [REDACTED] to appear to be suffering from Adjustment Disorder with Anxiety as he is “experiencing excessive worry and anxiety about the impending INS issues with his wife, and [is] upset with the possibilities of a separation.” Dr. [REDACTED] reports that [REDACTED] described a history of depression, anxiety and alcoholism that occurred during the time of his divorce and finds that separation from the applicant would result in an increased risk of psychological depression, the return of alcoholism and the possible recurrence of physical problems. She provides a listing of the fears expressed by [REDACTED] should he be separated from the applicant: becoming sick again; the return of his migraine headaches and malignant tumor; being unable to concentrate on his job; again becoming dependent on alcohol; feeling completely alone and empty; having no one to talk to; and the additional stress that would result without the applicant to assist in his father’s care. Based on her observations, she finds that: “Given [REDACTED]’s history, it is also likely that if [the applicant] is forced to leave, that [REDACTED] will develop significant problems in his [sic] all or most areas of his psychological, physical and occupational functioning.

On appeal, counsel contends that [REDACTED] evaluation makes a strong case for extreme hardship and that the report was not accorded due weight by the field office director. He asserts that the field office director’s decision imposes a requirement that a psychologist must have previously treated the subject before a psychological evaluation will be considered, a “wholly artificial rule that has no valid basis under the Rules of Evidence.” He further notes that the field office director, having indicated that [REDACTED] had been diagnosed with Adjustment Disorder with Anxiety, concluded in error that [REDACTED] had failed to find that he had any existing or pre-existing mental illnesses.

While the AAO agrees that the field office director erred in finding that [REDACTED] diagnosis of Adjustment Disorder with Anxiety did not constitute a mental illness, it finds counsel to have mischaracterized the basis on which the field office director discounted the psychological report on Mr. [REDACTED]. The field office director did not discount [REDACTED] evaluation because she had not previously treated [REDACTED]. Rather, the field office director found that, in the absence of any other evidence to establish [REDACTED] emotional status, a psychological evaluation based on a single appointment with a psychologist was insufficient proof of extreme emotional hardship.

Although the AAO acknowledges [REDACTED] extensive experience in the field of mental health and notes that the input of any mental health professional is respected and valuable, it, nevertheless, concurs in the field office director’s finding that the report prepared by [REDACTED] may be given little evidentiary weight in the current proceeding. Being based on one hour-long interview with [REDACTED] and a second hour-long interview of the applicant and [REDACTED] on May 17, 2007, the conclusions reached in the evaluation do not reflect the insight and detailed analysis that an established relationship with a mental health professional would provide, rendering them speculative. In this regard, the AAO notes that [REDACTED] does not definitively conclude that [REDACTED] is suffering from Adjustment Disorder with Anxiety, but states only that [REDACTED] “appeared” to be suffering from this disorder at the time of his interview. The AAO also notes that [REDACTED] conclusions regarding the potential psychological impact of the applicant’s removal rely on [REDACTED] reporting of a “history of depression, anxiety and alcoholism,”

rather than any documentation of these prior conditions by other health care professionals. For these reasons, the AAO finds [REDACTED] evaluation to be of diminished value in determining extreme hardship.

Although the AAO notes the fears that [REDACTED] expressed to [REDACTED] concerning the recurrence of his cancer and headaches in the applicant's absence, neither of the letters provided by his doctors address whether the applicant's presence has ensured or is necessary to ensure his health or whether she plays a role in his health care. The record also fails to include any evidence that would substantiate [REDACTED] claim that he would be unable to concentrate on his work in the applicant's absence, as he told [REDACTED] was the case following his divorce and which resulted in his being "written up" at work. Although Mr. [REDACTED] is also concerned that additional stress would be placed on him if the applicant were unable to provide assistance to his father, the record does not indicate what additional responsibilities would fall on him as it fails to describe the type of support the applicant currently provides his father, beyond bringing him healthy food. Accordingly, the record does not establish that the applicant's removal would negatively affect [REDACTED] health, his employment or his ability to care for his elderly father. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

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.

The record, when 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 were removed from the United States. Rather, the record demonstrates that [REDACTED] would experience the distress and upheaval routinely created by the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remained in the United States following her removal.

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 removal from 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.