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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CHERRY HILL (NEWARK, NJ)

Date: JAN 09 2008

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

The AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed February 21, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On December 5, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed. On December 10, 2007, counsel submitted additional evidence regarding the applicant's wife's medical conditions.

The record reflects that the applicant is a native and citizen of Turkey 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 entering the United States by using a passport in someone else's name. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated January 23, 2006.

On appeal, the applicant, through counsel, states the applicant's "USC wife [was] diagnosed with Diabetes, High Blood Pressure, Asthma and depression. She is currently under medication. **She is also getting** professional assistance for her depression." *Form I-290B, supra*.

The record includes, but is not limited to, an affidavit from the applicant's wife, a letter from the applicant's step-daughter, medical documents from Cardiac Associates of Southern Connecticut, P.C., and Black Rock Turnpike Medical Group, and letters from Bridgeport Community Health Center regarding the applicant's wife medical condition. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) 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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (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 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 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...

In the present application, the record indicates that on December 20, 1991, the applicant entered the United States by presenting a passport in the name of [REDACTED]. On May 29, 1997, the applicant divorced his first wife, [REDACTED], a Turkish citizen. On July 29, 1997, the applicant married [REDACTED] a United States citizen, in Connecticut. On May 30, 1998, the applicant was charged with vehicular homicide; however, the charges were dismissed on April 10, 2000. On June 2, 2001, the applicant’s wife filed a Form I-130 on behalf of the applicant, which was approved on March 12, 2002. On or about August 8, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 23, 2005, the applicant filed a Form I-601. On January 23, 2006, the District Director denied the applicant’s Form I-601, finding the applicant had failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s United States citizen spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant’s wife states she is “unemployed because of [her] health.” *Affidavit of* [REDACTED] [REDACTED] dated October 11, 2005. The AAO notes that the applicant’s wife is being treated for Type 2 Diabetes. *See letter from Bridgeport Community Health Center*, dated August 17, 2005. Counsel states the

applicant's wife was diagnosed with "Diabetes, High Blood Pressure, Asthma and depression." *Form I-290B, supra*; see also letter from Bridgeport Community Health Center, dated January 26, 2006. Additionally, the applicant's wife was diagnosed with "a dilated left ventricular chamber size with a medium sized defect of very mild intensity within the anterior wall of the left ventricular myocardium." *Cardiac Associates of Southern Connecticut, P.C.*, dated October 30, 2006. However, the AAO notes that there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant.

The applicant's step-daughter states her "mother is not working right now due to her health, the only one who helps [them] out is [her] stepfather Mustafa without him it is very impossible." *Letter from [REDACTED]*, undated. The applicant's wife states the applicant "provides [them] with all of [their] financial needs. He also cares for [her] and is a source of strength and emotional support because of [her] illness. Both [her] daughter and [her] depend upon him totally for all [their] financial and emotional needs." *Affidavit of [REDACTED]*, *supra*. The AAO notes that it has not been established that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States nor does the medical documentation establish that his wife is incapable of working on her own. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

Additionally, there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Turkey. The AAO notes that the applicant's spouse did not state she would suffer any hardship if she joined the applicant in Turkey. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanied him to Turkey.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 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)(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.