



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: MOSCOW, RUSSIA Date: **JAN 22 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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Moscow, Russia, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212 of the Immigration and Nationality Act, 8 U.S.C. § 1182. 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 29-year-old native and citizen of the Republic of Georgia who was found inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and (9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (9)(B)(i)(I). The record reflects that the applicant is the spouse of a United States citizen. The couple has a U.S. citizen child. The applicant seeks a waiver of inadmissibility in order to return to the United States and obtain lawful permanent resident status.

The officer in charge found that the applicant was inadmissible because she accrued unlawful presence in the United States, and on the basis of a finding by the Forensic Document Lab that the documents submitted in support of her asylum application were fraudulent. The officer in charge further found the applicant ineligible for a waiver of inadmissibility because she failed to establish that her U.S. citizen spouse or child would face extreme hardship should her application be denied.

On appeal, the applicant's U.S. citizen spouse contends that he would face extreme hardship due to the separation of his family. *See* Form I-290B, Notice of Appeal to the AAO; *see also* Statement of the Applicant's Spouse Submitted on Appeal. The applicant's spouse claims that he is unable to find work in the Republic of Georgia and was forced to return to the United States in order to provide for his family. *Id.* His return to the United States has resulted in his separation from his son, because he cannot care for him by himself in the United States. *Id.* The applicant's spouse further states that he was robbed at gunpoint in the Republic of Georgia, and would not feel safe there. *Id.* The applicant's spouse explains that the family's separation is causing extreme emotional hardship as well. *Id.*

With respect to the issue of inadmissibility, the AAO finds that the officer in charge erred in finding the applicant ineligible under section 212(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(9)(B)(i)(I). Contrary to the findings of the officer in charge, the applicant was not unlawfully present in the United States. The evidence in the record indicates that the applicant entered the United States in July 1999 and was admitted as a J-1 Visitor for Duration of Status. In August 2000, the applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status. She subsequently filed a Form I-589, Application for Asylum and Withholding of Removal (while her Form I-539 remained pending). On April 3, 2001, the applicant's asylum application was referred to the Immigration Court. On September 25, 2003, the applicant was granted voluntary departure by the Immigration Court. The record indicates that the applicant timely departed the United States on November 6, 2003. Therefore, the AAO finds that the applicant did not accrue unlawful presence in the United States.

Nevertheless, the AAO finds that the officer in charge correctly determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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 record includes a report by the U.S. Department of Justice, Intelligence Division, Forensic Document Lab, finding that the documents submitted in support of the applicant's asylum application were counterfeit or otherwise fraudulent. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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”

8 U.S.C. § 1182(i)(1). 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's child also may not be considered.

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 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, [REDACTED], was born in 1978 in Mississippi. He married the applicant on October 4, 2003 in Arkansas. The couple has a child.¹

The applicant's spouse states that if the waiver application is denied he would face extreme hardship. *See* Statement of the Applicant's Spouse Submitted on Appeal. The applicant's spouse states that he does not speak Georgian and is unable to find work in the Republic of Georgia. *Id.* He further states that was robbed at gunpoint while he lived abroad. *Id.* The applicant's spouse explains that he owns a house in the United States and must make monthly payments on it. *Id.* He further explains that the income he could earn abroad would not be sufficient to maintain his house and provide for his family. *Id.* Alternatively, the applicant's spouse claims that he experiences extreme emotional hardship resulting from the separation from his wife and child. *Id.* He states that he cannot bring his child to the United States because he is unable to care for him while working full time. *Id.* He thus explains that he has "no option other than leaving [him] in Georgia with his mother." *Id.* The applicant indicates in the Form I-601, Application for Waiver of Ground of Excludability, that her father-in-law resides with her spouse in Arkansas.

The AAO has considered the evidence in the record, individually and in the aggregate. The AAO finds that the hardship that would be experienced by the applicant's spouse should he relocate to the Republic of Georgia would rise to the level of "extreme." Nevertheless, the applicant is a U.S. citizen and, as such, he is not required to relocate to the Republic of Georgia. Any relocation would be a matter of the family's choice. The AAO further finds, on the other hand, that the applicant's spouse's hardship should he remain in the United States does not rise to the level of "extreme." The applicant's spouse may remain in the United States, where he owns a home and has family ties, and where he can be well-employed and provide for his family abroad. The AAO recognizes the emotional hardship associated with the family's separation, but finds that the hardship in this regard would be no greater than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Therefore, the applicant is not eligible for the waiver of inadmissibility.

In sum, 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. 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

¹ The record suggests that the applicant's child was born on or about October 2005. The child's birth certificate is not in the record.

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).

While the AAO has carefully considered the impact of separation from family 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 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.