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U.S. Department of Homeland Security  
20 Mass Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H/2

[REDACTED]

FILE:

[REDACTED]

Office: MOSCOW, RUSSIA

Date: JAN 22 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Moscow, Russia and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Armenia who was found to be inadmissible to the United States 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 attempted to procure admission into the United States by fraud or willful misrepresentation on October 6, 1994 and March 4, 1996. The applicant is married to a U.S. citizen, has an adult U.S. citizen daughter and an adult daughter who is a lawful permanent resident. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer-in-charge stated that the applicant failed to show extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The officer-in-charge also stated that the applicant's case does not warrant a favorable exercise of discretion because the unfavorable factors in her case outweigh the favorable factors. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated December 16, 2005.

On appeal, counsel asserts that the applicant's spouse is suffering mentally and physically from not having the applicant with him in the United States. Counsel states that the applicant's two daughters are also suffering mentally and physically from witnessing their father's suffering. *Counsel's Letter*, dated September 12, 2007. Counsel submits additional evidence of hardship with his appeal.

The record indicates that on October 6, 1994, the applicant attempted to enter the United States using a valid B-2 visitor's visa issued to her by the U.S. embassy in Armenia. During secondary inspection at the port-of-entry, the applicant admitted that she was entering the United States to visit her daughter who had been living illegally in Detroit, Michigan since 1992. *Applicant's sworn statement*, dated October 6, 1994. The applicant stated that she concealed the information about her daughter's residence in the United States because she did not want to be refused entry. *Id.* The record also indicates that in 1996, while applying for a diversity visa, the applicant continued to conceal her daughter's presence in the United States when she stated on her immigrant visa application that she traveled to the United States in 1994 to visit a friend. *Unclassified cable, U.S. Embassy, Moscow*, dated July 16, 1996.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant 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.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Armenia or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the applicant's spouse is suffering mentally and physically from not having the applicant in the United States. Counsel states that the applicant has a lumbosacral spine problem and suffers from high blood pressure. *Counsel's Letter*, dated September 12, 2007. Counsel asserts that, because of his medical condition, the applicant's spouse is not able to move, feels dizzy, and has a poor memory. He states that the applicant's spouse cannot control his condition and that he suffers mentally and physically because the applicant is not with him to provide his medications, prepare his food and care for him. In his letter, counsel states that the applicant and her spouse are suffering from depression as a result of not being together and that the applicant's two daughters are suffering from witnessing their father suffer. *Id.* In support of these

assertions, counsel submits a note from [REDACTED], a radiology report and a disability report prepared for the Social Security Administration (SSA).

[REDACTED], a psychiatrist, states that the applicant's spouse has been his patient since May 20, 2000 and that the applicant's spouse is disabled, receiving treatment and in need of permanent care. *Letter from Dr. [REDACTED]* dated January 7, 2006. The radiology report, prepared by [REDACTED], states that the impression from the testing done is that of "spondylosis and alteration of alignment, consistent with skeletal muscle spasm." *Radiology Report*, dated September 6, 2000. The record also includes a disability report application to the SSA in which the applicant's spouse states that he is not able to work because he experiences back pain, spinal spasms, numbness, anxiety, and memory loss. The applicant's spouse states that he first started having symptoms and was unable to work starting in May of 1986. Additionally, the applicant's spouse states that he sees [REDACTED] for psychiatric care, was treated for a range of medical problems in 1998-1999 by [REDACTED] and [REDACTED], and received in-patient care at a mental health center in Armenia from November 10, 1986 to November 14, 1986. He states that he has emotional problems, anxiety, fearfulness, insomnia and hates for people to be around him. *Disability Report*, undated.

The AAO notes the claims made by the applicant's spouse regarding his mental and physical suffering in the applicant's absence but does not find the record to support his assertions. The letter from [REDACTED] reports that the applicant is disabled, receiving treatment and in need of care on a permanent basis, but fails to indicate the nature or extent of the disability, the type of treatment the applicant's spouse is receiving or what type of care he requires. He does not state that the applicant's absence contributes to the suffering of her spouse or that she is necessary for his care or well-being. The radiology report indicates that the applicant's spouse may be suffering from spondylosis or spinal arthritis, a common degenerative condition associated with aging. [REDACTED] does not indicate the severity of the degeneration or that it impairs the ability of the applicant's spouse to function. The SSA disability application reporting the health problems of the applicant's spouse is not supported by a medical evaluation and is, therefore, insufficient evidence of the status of his health. 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)).

The AAO also notes that the record indicates that the applicant's spouse is a naturalized U.S. citizen who received his lawful permanent residence through the diversity visa program on November 30, 1996. The applicant's spouse moved to the United States in 1996 and has been living without the applicant since that time. The record shows that a Petition for Alien Relative (Form I-130) was not filed for the applicant until October 11, 2002. Moreover, the applicant's spouse has two adult daughters living in the United States and the record does not indicate that they are unable or unwilling to help care for their father. Thus, the AAO finds that the record does not demonstrate that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility.

The AAO also finds that the record does not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to Armenia. The applicant has not submitted any evidence to establish the hardships that would face her spouse should he relocate to Armenia as a result of her inadmissibility. In an undated statement, the applicant's spouse does not indicate what hardships he would face upon return to

Armenia, except to describe Armenia as “the hell I once escaped.” Therefore, the AAO finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility.

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.

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 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.