

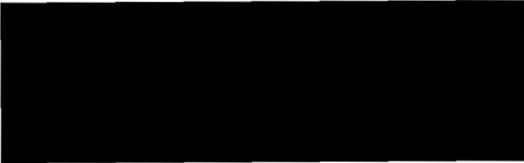
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and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 11 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 waiver application was denied by the Director, California Service Center, and 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 native and citizen of Macedonia 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 presenting a passport in someone else's name. The record indicates that the applicant is married to a naturalized 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 and children

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated April 26, 2006.

On appeal, counsel contends that "[t]he Director erred in finding that the applicant's wife would not suffer extreme hardship within the meaning of the statute. The factors involved in the case established that the applicant's wife would suffer extreme hardship. These factors, however, were not addressed and given no consideration because of the Director's view that leaving the country to be with her husband was a 'personal choice' and nullified any claim to hardship." *Form I-290B*, filed May 26, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and his wife, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 January 22, 2000, the applicant entered the United States by presenting a passport in someone else's name. On March 5, 2001, the applicant's wife, a lawful permanent resident of the United States, filed a Form I-130 on behalf of the applicant. On July 26, 2004, the applicant's wife became a United States citizen. On August 6, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 11, 2004, the applicant's wife filed another Form I-130 on behalf of the applicant. On September 7, 2004, the applicant's Form I-130 was approved. On January 31, 2005, the applicant filed a Form I-601. On April 26, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his spouse.

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 (Board) 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.

Counsel asserts that the applicant's wife will suffer extreme hardship if she joins the applicant in Macedonia. *See Appeal Brief*, dated May 23, 2006. Counsel states the applicant's wife "has lived in the United States for twenty-one years after coming here and being granted asylum in 1985 with her parents and her two sisters...Her mother is an LPR, her father is a United States citizen. One of her sisters is an LPR, and one is a United States citizen...[The applicant's wife's] entire family, including the applicant and their children, her parents, her sisters and their families, and her grandmother, lives in a house owned by her parents." *Id.* Counsel states the applicant's wife "has worked at Harvard Cleaning Services since 1997. She earns more than \$40,000 per year, and she has health insurance that covers her, [the applicant], and her children." *Id.* The AAO notes that the applicant's wife is the primary wage earner in the family. Counsel states the applicant's wife would feel obligated "to accompany her husband if he is removed because she wants to keep

her family together...She would be separated from her parents and sisters, and worse, she would be returning to a country from which she fled when she was granted asylum in the United States.” *Id.* The applicant’s wife states “[i]f [the applicant] were deported from this country [she] would have to go with him and [she] would have to take [their] two children with [them], as [they] cannot break-up the family. Leaving this country would be a severe hardship to [her] for many reasons. It would require [her] return to a country from which [she] was granted political asylum. Also, it would mean that [she] would be separated, perhaps permanently, from [her] parents, [her] grandmother, [her] sisters and their families...[She] would have to give up [her] job in which [she] earn[s] \$ 40,000 a year and which gives [her] and [her] family substantial benefits.” *Affidavit from* [REDACTED], dated April 4, 2006. Counsel contends that the “Director’s decision in [the applicant’s] case is...in direct conflict with the cases that he cites. Because family unity is so important, the cases presume that families will remain united and the qualifying relatives will accompany the deported spouse and parent, and they examine the hardship that will accrue to the qualifying relatives when they leave the United States...In [the applicant’s] case, the...Director said that accompanying [the applicant] is a personal choice. Because the qualifying spouse cannot be removed, he or she, however, will always be put in the position of having to make one or the other of these personal choices when his or her spouse is being removed: either split the family or keep the family together. Regardless of [the applicant’s wife’s] choice, according to the...Director, it is a personal choice such that she can never suffer extreme hardship.” *Appeal Brief, supra.* The AAO notes that if counsel’s reasoning is followed, then separation alone will establish an extreme hardship; however, this is a factor that every case will present, and the Board has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). The AAO notes that the applicant’s wife faces the decision of whether to remain in the United States or relocate to avoid separation; however, as a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request.

The record establishes that the applicant’s spouse would suffer extreme hardship if she joins the applicant in Macedonia. The AAO notes that all of the applicant’s wife’s family is located in the United States, she has no family ties to Macedonia, a country she left as a refugee, she is the primary wage earner, and her employment provides health insurance for the family. However, the applicant did not establish that his wife would suffer extreme hardship if she remains in the United States without the applicant. The AAO notes that the applicant has not established that his wife cannot provide for her daily needs without him or that any emotional hardship caused by the separation is beyond that experienced by others in her situation. Additionally, the AAO notes that the record fails to demonstrate that the applicant is unable to contribute to his wife’s financial wellbeing from a location outside of the United States. 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.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the

applicant's wife will endure hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States.

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.