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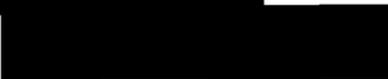


FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 11 2008

IN RE:



PETITION:

Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and 8 U.S.C. § 1182(h).

ON BEHALF OF PETITIONER:



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 of the California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of England who was found to be inadmissible to the United States pursuant section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime of moral turpitude; and section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the spouse of a naturalized citizen and the daughter of a lawful permanent resident mother and father, sought a waiver of inadmissibility, which the director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director, dated March 27, 2006.*

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The judgment in the record reflected that the applicant pleaded guilty to one count of False Representation as U.S. citizen, 18 U.S.C. § 911, on or About May 26, 1989. She was ordered to pay a fine, was placed on probation for two years, and was ordered to perform community service. Thus, she was convicted for immigration purposes.

**A violation of 18 U.S.C. § 911 does not involve moral turpitude, however. The Board of Immigration Appeals in *In re K-*, 3 I. & N. Dec. 69 (BIA 1947), stated that the prior version of 18 U.S.C. § 911 (section 346(a)(18) of the Nationality Act of 1940) had been held not to involve moral turpitude in *In re G-*, 56088/788, August 26, 1941). And BIA decisions after *In re K-*, although decided on other grounds, generally accept the holding that a conviction for falsely claiming U.S. citizenship does not involve moral turpitude. *See In re Y-*, 7 I. & N. Dec. 697, 699 (BIA 1958) (“this Board has held that a false claim to citizenship does not involve moral turpitude”); and *In***

*re B-*, 7 I. & N. Dec. 342, 345 (BIA 1956) (“We note that counsel has cited the *Duncan* case as holding that the crime of making a false statement in the passport application (18 U.S.C. 1542) requires less than the crime of making a false representation of United States citizenship (18 U.S.C. 911), which latter statute we have held does not involve moral turpitude”). Thus, the director erred by finding that the applicant’s conviction under 18 U.S.C. § 911 constituted a crime of moral turpitude.

The applicant was also found inadmissible for seeking admission into the United States by fraud or willful misrepresentation. Section 212(a)(6)(C) of the Act provides, in pertinent part:

(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 chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter . . . is inadmissible.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 . . .

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Here, the record reflects that the applicant made a false claim to U.S. citizenship on May 26, 1989 at the Miami Passport Agency, Miami,

Florida, in an application for a U.S. passport, and that she pled guilty to 18 U.S.C. § 911, false representation as a U.S. citizen. Because the applicant's false claim to U.S. citizenship occurred prior to September 30, 1996, she is eligible to apply for a Form I-601 waiver.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's husband and parents. If extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant, and in the alternative, that the qualifying relative remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains letters, divorce decrees, marriage and birth certificates, invoices, income tax and W-2 Forms, wage statements, a loan statement, and other documents.

On appeal, counsel states that the director failed to consider the evidence showing extreme hardship to the applicant's mother if the applicant were deported and incorrectly stated that the applicant needed to establish extreme hardship to her child. Counsel indicates that the letter by I [REDACTED], the treating

physician of the applicant's mother, demonstrates that because of her medical problems, the applicant's mother would experience extreme hardship if the waiver application were denied. Counsel states that the applicant's mother depends upon the applicant for daily care. He also states that the applicant's mother has been a permanent resident since 2002, and is not yet eligible to file for citizenship, and would abandon her residency if she joined her daughter to live in England. It is noted that the record shows that the applicant's mother was born in Jamaica.

The January 6, 2005 letter by [REDACTED] conveyed that he is the treating physician of the applicant's mother, who is 65 years old. He stated that the applicant's mother has been diagnosed with advanced osteoarthritis in her knees, hypertension, and Raynaud's Syndrome. He stated that the applicant lives with her mother and assists in her daily care. [REDACTED] stated that the applicant's mother conveys that she has pain and had difficulty transitioning from a bed, a chair, and a car; and in ambulating; and in washing herself; and is unable to walk or stand for prolonged periods.

In her letter dated April 24, 2006, the applicant's mother stated that the letter by [REDACTED] accurately described her medical condition. She stated that she lives with the applicant in a one-story house so physical and daily activities are more accessible. She further stated that she receives special medical care in the United States that she would not have in England. The applicant's mother indicated that doctors have recommended that she use a walker and an elevated toilet seat to aid in functioning. She stated that she will lose her permanent residency if she joined her daughter in England.

The letter dated October 20, 2005 by [REDACTED], a Board-Certified Rheumatologist, stated that the applicant's mother has severe generalized osteoarthritis and a history of Raynaud's disease and is unable to care for herself alone at home without the assistance of the applicant. He stated that the applicant's mother has difficulty ambulating around the house as a result of severe knee discomfort, has significant joint pain in her hands, and is unable to perform most daily activities including cooking and cleaning. He states that her walking distance is very limited and that she depends upon the applicant to provide for her most of the time.

The record reveals that the applicant was gainfully employed in 2005. The wage statement reflects that she was employed 77.40 hours for the pay period ending August 10, 2005, 72.60 hours for the pay period ending August 24, 2005, and 50 hours for the pay period ending June 24, 2005. The W-2 Forms for 2004 show she was employed as a nurses aid, earning \$2,840 with Brown's Home Care and Nursing Services, and \$16,113.28 with Empathy Care, Inc.

The amended income tax records for 2004 show the applicant's mother as the dependent of the applicant and his wife.

The September 10, 2005 letter by Empathy Care, Inc. conveyed that the applicant has been employed there since October 21, 2003 as a home health aid/certified nursing assistant on a per diem basis.

The record establishes that the applicant's mother would experience extreme hardship if she were to join the applicant to live in England.

The applicant's mother states that she will lose her permanent resident status if she joined the applicant to live in England. Based on the documentation in the record, which shows the applicant's mother as a permanent resident, the AAO finds that the applicant's mother will experience extreme hardship if she were to lose her permanent residency in order to join the applicant in England.

The present record fails to establish that any qualifying relative of the applicant would experience extreme hardship if he or she were to remain in the United States without the applicant.

Although the letters by the physicians convey that the applicant's mother has advanced osteoarthritis in her knees, making activities difficult, the AAO finds that the record reveals that the applicant works on a full-time basis while her mother is at home alone. For this reason, the AAO finds the value of the physician's letters are accordingly diminished and fail to demonstrate that the applicant's mother depends solely upon her daughter to function on a daily basis.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), "it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship." In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is illegally within this country cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country. Thus, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit

stated that deportation is not without personal distress and emotional hurt, and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband and mother, if they remain in the United States without her, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband and mother, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, Sullivan, supra.*

The applicant does not make any claim of extreme financial hardship to her mother, father, or husband if they were to remain in the United States without her.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The applicant has established that her mother will experience extreme hardship if she were to join the applicant to live in England. However, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant's husband, father, or mother were to remain in the United States without her. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.