



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: **JUL 30 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 PETITIONER:

[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, Los Angeles, California, 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 sought to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the wife of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated March 31, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the applicant's husband would not suffer extreme hardship if the applicant were removed from the United States and failed to consider the evidence of different types of hardship cumulatively. *Brief in Support of Appeal* at 5. Specifically, counsel states that the applicant's husband would suffer extreme financial hardship and would not be able to maintain his residence without the applicant's income. *Brief* at 2. Counsel further states that the applicant's husband would not have access to adequate medical care in Armenia and would be unable to find employment. *Brief* at 3-7. Counsel additionally asserts that the applicant's husband and stepson would suffer emotional hardship if she were removed from the United States, and the applicant merits a waiver of inadmissibility as an exercise of discretion. *Brief* at 8-9. Counsel submitted with the appeal reports on conditions in Armenia, and the record also contains affidavits from the applicant and her husband, medical records for the applicant's husband, a letter from the applicant's church, and an affidavit from the applicant's stepson. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The AAO notes that the record contains several references to the hardship that the applicant's stepson would suffer if he were to relocate to Armenia. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's stepson will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-seven year-old native and citizen of Armenia who entered the United States on August 22, 1991 as a visitor for pleasure. On December 12, 1995, the applicant submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Worker (Form I-140) filed on the applicant's behalf. The I-140 petition was based on an approved Application for Alien Employment Certification (labor certification) that listed work experience for the applicant including work as a jewelry designer in Yerevan, Armenia from 1989 to 1991. In support of the

labor certification application, the applicant submitted a letter from the Yerevan Jewelry Factory stating she had been employed there as a jewelry designer. An investigation into the applicant's alleged work experience conducted by the Immigration and Naturalization Service (INS, now CIS) revealed no evidence that the applicant had ever been employed at the Yerevan Jewelry Factory. When confronted with this information, the applicant admitted to misrepresenting her employment experience in order to obtain permanent resident status as a skilled worker based on the labor certification.

The record further reflects that the applicant's husband is a fifty year-old native of Armenia and citizen of the United States whom the applicant married on October 21, 2000. The applicant and her husband reside in Glendale, California with the applicant's twenty-two year-old stepson.

Counsel asserts that if the applicant is removed from the United States, her spouse will suffer financial hardship and will probably lose his home due to the loss of the applicant's income. Counsel states that CIS disregarded the applicant's husband's statement that with "significantly diminished income," he would not be able to maintain his residence and would be living below the poverty guidelines. *Brief* at 2-3. In his affidavit the applicant's husband states,

If my wife were to return to Armenia, my financial state would be devastated. Now both of us earn about twenty thousand dollars per year . . . Out of twenty thousand dollars of income, my wife earns about six to seven thousand dollars. If she were to return to Armenia, my family's income would have plummeted to below the poverty guidelines accepted in the United States. *Affidavit of Petros Chilingaryan* dated January 20, 2006.

The record contains copies of income tax returns submitted with an affidavit of support in 2005 indicating that the applicant's husband reported an annual income of \$11,964 from 2002 to 2004. An individual tax return for the applicant indicates she earned \$7081 in 2004. No further documentation was submitted with the waiver application or appeal concerning the income, expenses, or overall financial situation of the applicant and her husband. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. Counsel states that the applicant's husband would "possibly become homeless" due to the loss of the applicant's income, but the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of [REDACTED]*, 19 I&N Dec. 1 (BIA 1983); *Matter of [REDACTED]*, 17 I&N Dec. 503, 506 (BIA 1980). Further, even if the loss of the applicant's income would have a negative impact on her husband's financial situation, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In his affidavit the applicant's husband states, "Ever since our marriage, we lived as one loving couple and we plan to spend the rest of our lives together. Almost is my true love and I do not see my life without her." *Affidavit of [REDACTED]* at 1. He further states that he and his son would suffer extreme hardship if the applicant is removed from the United States. *Id.* No additional evidence was submitted concerning the potential emotional or psychological effects of the applicant's removal on her husband. The evidence does not establish that any emotional harm the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or

exclusion. Although the depth of his concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus familial and emotional bonds, exists.

Counsel further asserts that the applicant's husband would suffer extreme hardship if he relocated to Armenia due to his medical condition. Counsel states that CIS erred in relying on self-serving information from the website of the Armenian Republican Medical Center, which included a claim that the center has a cardiology department "equipped by modern computers," to conclude that the applicant's husband would have access to adequate medical care in Armenia. *Brief* at 6-7. A letter from the applicant's husband's doctor submitted with the waiver application states,

He suffers from severe hypertension, hypercholesterolemia. He also has a history of intermittent cardiac arrhythmias and underwent ablation of AV nodal slow pathways. He needs to be under continuous medical and cardiologic care due to his ongoing medical condition. *Letter from [REDACTED]* dated December 17, 2005.

Counsel also submitted medical records including an October 2003 letter from the applicant's husband's cardiologist to the referring doctor, a "procedure report" describing a "comprehensive electrophysiology study with arrhythmia induction" and "mapping and radiofrequency ablation of AV node slow pathway," and a copy of an electrocardiogram performed on December 4, 2003.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's husband's condition is so serious that he would suffer extreme hardship if he were to relocate to Armenia. The record contains a brief letter from his doctor that states that he needs to be under continuous medical and cardiologic care, but provides no detail concerning any current treatment or medications or the type of care needed in the future. Further, the other records in the file, including the letter from the cardiologist and the procedure report, contain descriptions of the diagnosis and procedure that are not easily understood because they are prepared for other medical professionals and employ numerous medical terms and abbreviations. The record does not contain specific evidence concerning the current medical condition of the applicant's husband, such as a detailed letter in plain language from his physician explaining the nature and long-term prognosis of the condition and any treatment and medication needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, counsel did not submit any information on the availability of medical care in Armenia to support the assertion that the applicant's husband would not have access to adequate care there.

Counsel additionally asserts that Armenia is “a third world country with massive unemployment, lack of resources and [a] country at the brink of war.” *Brief* at 4. The applicant’s husband further states that the economic and political situation in Armenia is “appalling,” human rights abuses are widespread, and he would be unable “to find a job, residence and/or medical care.” In support of these assertions, counsel submitted the CIA World Factbook report on Armenia, which contains facts and statistics on the geography, government, economy, and other issues. Counsel also submitted the 2004 U.S. State Department Country Report on Human Rights Practices in Armenia. These documents provide general information on the economic and political situation in Armenia, including information on the country’s trade imbalance and gross domestic product, the unemployment rate, and the percentage of the population living in poverty as well as reports of retaliation against members of the political opposition and other human rights issues. Although it appears the applicant’s husband would suffer a decline in his standard of living if he were to relocate to Armenia, the evidence is insufficient to establish that any economic hardship would rise to the level of extreme hardship. *See INS v. Jong Ha Wang, supra* (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Based on the evidence on the record, the emotional and physical hardship that the applicant’s husband would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen husband as required under section 212(i) of the Act.

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. 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.