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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

**JUN 0 2 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Philadelphia, Pennsylvania, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, [REDACTED], is a 36-year-old native and citizen of Algeria who was found 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). The record reflects that the applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to adjust his status to that of a lawful permanent resident under section 245 of the Act, 8 U.S.C. § 1255, and remain in the United States with his spouse.

The acting district director denied the applicant's waiver of inadmissibility after revoking the approved Form I-130, Petition for Alien Relative, filed on his behalf and finding that there was no underlying petition and therefore no predicate to the waiver application.<sup>1</sup> The acting district director further found that the applicant had failed to establish that his spouse would face extreme hardship should the waiver application be denied or that a waiver was warranted in the exercise of discretion.

On appeal, the applicant, through counsel, contends that he is not inadmissible because his admitted misrepresentation to the consular official was not material. *See Applicant's Appellate Brief.*

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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.

Section 212(i) of the Act provides, in pertinent part:

(i) (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).

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<sup>1</sup> The AAO notes that the Board of Immigration Appeals entered an order on November 30, 2007 vacating the district director's decision with respect to the applicant's visa petition.

The acting district director found the applicant to be inadmissible based on his admission that he had misrepresented his marital status to the consular officer when he applied for a non-immigrant visitor's visa. The applicant maintains that his marital status was not a material fact, and therefore he is not inadmissible for having stated that he was married when he was not.

According to the Department of State's Foreign Affairs Manual, a misrepresentation is material if either: (1) The alien is excludable on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. 9 FAM 40.63 N61. The applicant's marital status was not an eligibility criteria for admission to the United States or for issuance of a non-immigrant visitor's visa, but an admission by the applicant that he was not married may have resulted in his inadmissibility or exclusion. The applicant's misrepresentation shut off a line of inquiry that was relevant to the alien's eligibility and may have resulted in a finding of inadmissibility. A misrepresentation is generally material if by it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 US 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). The AAO notes that the applicant admits that "[h]e told the consular officer that he was married ... because he believed that this would bolster his chances of being granted a visa." See Applicant's Appeal Brief at 3. The applicant also admits that he had "decided he could no longer remain in Algeria." *Id.* The AAO finds that had the consular officer been aware of the applicant's marital status, he would have inquired further into the applicant's intent and likely concluded that the applicant did not intend to travel to the United States temporarily as a visitor. The AAO therefore concludes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Having found that the applicant is inadmissible, the question remains whether the applicant is eligible for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

A waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), is 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.

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 claims that she would face extreme hardship should she decide to remain in the United States due to her separation from the applicant and financial considerations. *See* Applicant's Spouse's Affidavit and Statement; *see also*, Counsel's Letter Accompanying Form I-601, dated March 25, 2005. The applicant's spouse further claims that relocating to Algeria would result in extreme hardship because she does not speak the language, does not know the culture, will be separated from her ailing father and family, will not have medical insurance, and will be living in a violent country where women are discriminated. *Id.*

The record includes letters from the spouse's family, friends and acquaintances, as well as her father's medical records and the couple's tax and insurance records. Applicant's counsel lists a letter from the applicant's spouse's physician in the list of exhibits, but the AAO notes that the letter is not in the record. The record also contains documents relating to the political conditions in Algeria.

The AAO finds that the applicant has not established that his spouse would face extreme hardship should the waiver be denied. The applicant's spouse's concerns about relocating to Algeria are common to individuals facing similar situations, and do not rise to the level of extreme. Hardship to the applicant's father in law is not a relevant consideration under the statute, and the applicant has not provided evidence to establish that his spouse's sister or other family members cannot provide the required care. The AAO notes, in any event, that the applicant's spouse is not required to relocate to Algeria. In terms of hardship resulting from the couple's separation, the AAO finds also that the applicant has not established that it rises to the level of "extreme." The applicant's spouse is well-employed as a teacher and has close and extended family and friends in the United States. Although the applicant claims that his spouse is being treated for depression, the record does not contain any evidence to corroborate the claim. The AAO notes that depression is also common among individuals in the applicant's spouse's situation. Considered individually and in the aggregate, the facts in this case do not demonstrate that the applicant's spouse would face extreme hardship.

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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996). The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse.

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.