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U.S. Citizenship
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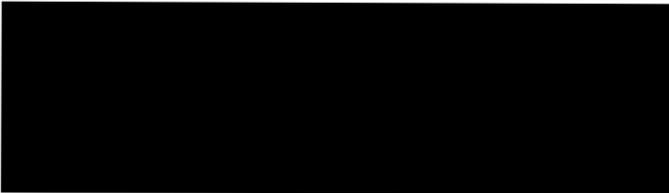
IN RE:

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 District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ukraine 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 his U.S. citizen wife and step-son.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 13, 2006.

On appeal, counsel for the applicant contends that the applicant's wife will suffer hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel*, dated October 12, 2006.

The record contains a letter from counsel in support of the appeal; statements from the applicant's wife and stepson; a psychological evaluation of the applicant's wife and stepson; a copy of the applicant's birth certificate; a copy of the applicant's passport; a Form I-864, Affidavit of Support, executed by the applicant's wife on his behalf; letters verifying the applicant's and his wife's employment; copies of tax records for the applicant and his wife; medical documentation for the applicant's father-in-law; a copy of the applicant's wife's birth certificate; a copy of the applicant's father-in-law's permanent resident card; a copy of the applicant's mother-in-law's naturalization certificate; copies of documentation regarding the applicant's wife's mortgage and monthly expenses; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate, and; copies of photographs of the applicant and his family. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant was denied a visa by the U.S. Consulate in Kiev, Ukraine. He then reapplied using a passport under a different name in order to conceal the fact that he had previously been denied. The applicant obtained a visa under the alternate name and entered the United States on January 14, 2000.

On March 15, 2006, the applicant provided sworn testimony at the U.S. Citizenship and Immigration Services Philadelphia District Office in connection with a Form I-485 application to adjust his status to permanent resident. The applicant stated that he entered the United States without inspection by crossing the U.S. Mexico border on foot in 2000, thus misrepresenting his true manner of entry.

Thus, the applicant entered the United States by fraud, and made a willful misrepresentation of material facts in order to procure an immigration benefit (permanent residence in the United States.) Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 applicant himself experiences upon deportation is not a direct concern in section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

On appeal, the applicant's wife states that she and her son will experience hardship should the applicant depart the United States. *Statement from Applicant's Wife*, dated October 12, 2006. She explains that she cannot pay all of her monthly expenses without the assistance of the applicant. *Id.* at 1. She provides that her house requires repairs, that she is unable to afford them, and she would be unable to sell the house for a profit without making them. *Id.*

The applicant's wife states that she would be impacted by her son's hardship should the applicant depart. *Id.* She indicates that the applicant plays an important role in her son's life. *Id.* She explains that she would be compelled to act as a single parent in the applicant's absence. *Id.* She states that her son has attention deficit disorder, and that she would be unable to meet her son's related needs without the assistance of the applicant. *Id.* She indicates that her son would be compelled to change schools if she leaves her house, suggesting that he would experience hardship as a result. *Id.*

The applicant's wife states that her first marriage was emotionally difficult for her, and that she would experience significant psychological difficulty should the applicant be compelled to depart the United States. *Id.* at 2. She provides that she may fall into depression if the waiver application is denied. *Id.*

The applicant's wife asserts that she and her son cannot relocate to Ukraine with the applicant, as they require stability, particularly in light of her previous marriage. *Id.*

The applicant submits a psychological evaluation of his wife and stepson that was generated after a two-and-a-half-hour clinical interview of the applicant, the applicant's wife, and the applicant's stepson. *Psychological Evaluation*, dated September 30, 2006. The evaluation recounts facts of the applicant's and his wife's history as relayed by the applicant and his wife. *Id.* at 1-5. The evaluation states that the applicant's wife's former husband was an alcoholic which led to the deterioration of the marriage, and that the applicant's wife suffered emotionally. *Id.* The applicant's wife was diagnosed with Adjustment Disorder with Anxiety due to the uncertainty of the applicant's immigration status. *Id.* at 7. The applicant's stepson was diagnosed with Attention Deficit Hyperactivity Disorder, and the report suggests that the applicant's departure would exacerbate his stepson's condition. *Id.* The report recommends that the applicant's wife undergo short-term psychotherapy, and that the applicant's stepson receive a more comprehensive evaluation by a child or school psychologist to better understand his attention difficulties and reading problems. *Id.*

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant's wife explained that she would experience economic hardship should she lose the applicant's support. However, the applicant has not established that his wife would be unable to meet her needs in his absence.

It is noted that the applicant's wife earned \$44,000 per year and the applicant earned approximately \$26,000 per year as of September 30, 2006. The applicant's wife provided that she owns a home, yet the home requires repairs which prohibit her from selling it for a profit. However, the applicant has not shown that his wife requires a profit from the sale of her home in order to meet her needs. It has not been established that the applicant's wife could not sell her home and relocate to a less expensive property in order to lower her monthly expenses. The applicant's wife indicated that her son would be compelled to relocate to a new school should they move, but the applicant has not shown that there are no more affordable housing options within the school district where his stepson currently resides.

The record contains a statement from the applicant's wife in which she listed her household's monthly expenses, and she asserts that the expenses exceed her income. *Statement from Applicant's Wife*, dated September 11, 2007. However, the list contains an entry for monthly child support for the applicant's son abroad. The applicant has not shown that his wife would be responsible for this expense should he depart the United States. It is also noted that the expenses for utilities are based on the applicant's wife's current property, and the applicant has not shown that they cannot be lowered by relocating.

The applicant has not shown that his wife would endure economic difficulty or a reduction in her standard of living that rises to the level of extreme hardship.

The applicant's wife contends that she will experience significant emotional hardship should the applicant depart the United States. The record contains a psychological evaluation that diagnoses the applicant's wife with Adjustment Disorder with Anxiety due to the uncertainty of the applicant's immigration status, and recommends that the applicant's wife undergo short-term psychotherapy. However, the applicant has not provided whether his wife required or received follow-up care. The report does not clearly describe the severity of the applicant's wife's condition, or the impact it has on her daily functioning. The report discusses the applicant's wife as follows:

[The applicant's wife is] a rather high-energy, quick-thinking individual who presented in a somewhat dramatic manner. She was quite loquacious, speaking for long periods of time. She spoke clearly; her communications were logical, goal-directed, and relevant to the subject at hand. There was no evidence of hallucinations or delusions. Her intelligence is estimated to be well above average.

Psychological Evaluation at 5. While the AAO understands that the applicant's wife's general affect is not solely indicative of her ability to cope with emotional crisis, the report suggests that she functions at a high level in her current circumstances.

The applicant's wife described the circumstances of the disintegration of her first marriage. While the AAO understands that the applicant's wife endured a difficult prior marriage, the applicant has not established that his wife's prior experiences elevate her present hardship to a level that constitutes extreme hardship. The applicant has not shown that his wife's emotional suffering will be significantly different than that ordinarily expected of individuals separated 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 *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.

The applicant's wife explains that her son will experience hardship as a result of the applicant's departure from the United States, and that such hardship will impact her. As noted above, direct hardship to an applicant's child or stepchild is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for a child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The psychological evaluation suggests that the applicant's stepson receive a more comprehensive evaluation by a child or school psychologist to better understand his attention difficulties and reading problems. Yet, the report does not clearly reflect what contribution the applicant would make to his stepson's care with respect to his special needs. The applicant's wife provides that she would be compelled to act as a single parent in the applicant's absence, yet the applicant has not shown that his wife's circumstances would constitute greater hardship than that commonly experienced by families with children who are separated by deportation. The applicant has not submitted sufficient evidence to show that his stepson's hardship would elevate his wife's hardship to a level that constitutes extreme hardship.

Accordingly, the applicant has not shown that, should his wife remain in the United States and be separated from him, she would experience extreme hardship.

The applicant's wife asserts that she and her son cannot relocate to Ukraine with the applicant, as they require stability, particularly in light of her previous marriage. However, it is noted that the applicant's wife is a native of Ukraine, thus it is assumed that she is familiar with the local culture and language. The applicant has not established that his wife would be unable to obtain employment in Ukraine. The psychological evaluation indicated that his spouse had been trained as a nurse in Ukraine. No evidence has been provided to show that she would be unable to obtain employment in that or her current profession. Nor has the applicant indicated whether his wife has relatives in Ukraine or other ties. Thus, the applicant has not provided adequate evidence or explanation to show that his wife would experience extreme hardship should she relocate abroad with him to maintain family unity.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife should he be prohibited from remaining in the United States, considered in aggregate, rise to the level of extreme hardship. 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) 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.