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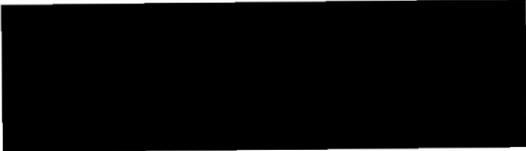
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 12 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, 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 the Dominican Republic 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is the wife of a U.S. Citizen and 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).

The service center director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Service Center Director Decision* dated April 16, 2006.

On appeal, the applicant asserts that Citizenship and Immigration Services (“CIS”) committed error in failing to consider hardship to the applicant’s spouse and child. Specifically, the applicant claims that she is eligible to apply for a waiver pursuant to section 212(i) of the Act and states that a 1993 memorandum from the Acting Executive Associate Commissioner of the Immigration and Naturalization Service (INS, now CIS) relating to “hardship to the spouse and child” was disregarded. The applicant further states that CIS ignored *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), a decision of the Board of Immigration Appeals (BIA) addressing extreme hardship to a U.S. Citizen child.

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 hardship to the applicant’s U.S. Citizen son. Section 212(i) of the Act provides for a waiver of inadmissibility only if extreme hardship to a U.S. Citizen or permanent resident spouse or parent is established. It is noted that Congress did not include hardship to an alien’s children 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 child 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 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. 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.

In the present case, the record reflects that the applicant is a twenty-nine year-old native and citizen of the Dominican Republic who has resided in the United States since January 14, 2000, when she entered using a fraudulent Dominican passport and U.S. visa under the name [REDACTED]. The applicant's husband is a fifty year-old native of the Dominican Republic and citizen of the United States. The applicant and her husband live in the Bronx, New York with their U.S. Citizen son.

On appeal the applicant asserts that the decision denying the waiver application "is legally flawed, lacking a fair and reasonable review of 8 USC 1182(i) available for adjustment of status after enactment of IMMAC (sic) (1990)." The applicant then refers to *Matter of Lazarte*, 21 I&N Dec. 214 (BIA 1996) and asserts that that decision does not bar her from applying from a waiver under section 212(i) of the Act. The AAO notes that the decision cited does not apply to the applicant because she is not the subject of a final order for violation of section 274C of the Act, 8 U.S.C. § 1324c, and further notes that the service center director did not find the applicant was barred from applying for a waiver under section 212(i) of the Act. Rather, the service center director found the applicant was eligible to apply for a waiver, but did not meet the statutory requirements to be granted the waiver because she failed to establish extreme hardship to a qualifying relative should she be refused admission to the United States.

The applicant additionally asserts that hardship to both her spouse and child should be considered and relies on a 1993 memorandum from the Acting Executive Associate Commissioner of the INS (now CIS) and the BIA decision in *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001) to support this assertion. The AAO notes that the memorandum cited by the applicant was issued before section 212(i) of the Act was amended in 1996 to require a showing of extreme hardship to a U.S. Citizen or permanent resident spouse or parent. Further, the BIA decision in *Matter of Kao & Lin, supra*, is not applicable because it concerns an application for

suspension of deportation under the former section 244(a) of Act, 8 U.S.C. § 1254(a), which was repealed in 1996. This form of relief allowed for consideration of extreme hardship to a U.S. Citizen child, whereas section 212(i) of the Act provides that a waiver may be granted only if extreme hardship to a spouse or parent is established.

The applicant asserts that her husband and son would suffer extreme hardship if she were removed from the United States. In support of this assertion the applicant's prior counsel had submitted with the waiver application an affidavit prepared by the applicant's husband and copies of the applicant's marriage certificate and their son's birth certificate. No additional evidence was submitted with the appeal or the waiver application. The affidavit describes how the applicant and her husband met and explains the circumstances of her fraudulent entry into the United States. It further states that it is "imperative" that the waiver application be granted "so that she may remain in the United States, so that [they] can continue to reside together as husband and wife, and so that [their] child can have [his] mother." *Affidavit of* [REDACTED] dated March 18, 2004. The applicant's husband additionally states that if the applicant were removed from the United States, he and their son would suffer extreme hardship. He further states, "I ask the Service to empathize with my plight. If it were your loved one that was being treated (sic) with removal or deportation. I can not even begin to express my feelings." *Id.* No further information was submitted to explain how denial of the waiver application would result in extreme hardship to the applicant's husband.

The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal 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 the familial and emotional bonds, exists.

No evidence was submitted to support the applicant's assertion that her husband would experience extreme hardship if she is removed from the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It appears from the record that any emotional hardship to the applicant's husband would 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) (holding 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*, 927 F.2d 465, 468 (9th Cir. 1991) (stating 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); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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. 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.