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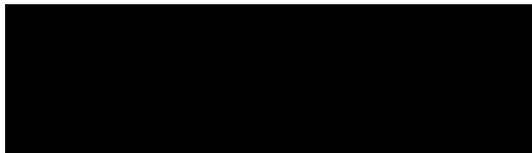
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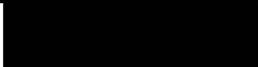
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date **MAY 21 2008**

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.

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

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 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the husband of a naturalized citizen of the United States, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated February 23, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that the applicant gained admission into the United States by presenting to an immigration inspector a fraudulent passport and a U.S. nonimmigrant visa, which he had obtained from the U.S. Embassy located in Santo Domingo, in the name of [REDACTED]. Because the applicant willfully misrepresented material facts, his identity, so as to obtain the nonimmigrant visa from the U.S. Embassy and gain admission into the United States, the AAO finds that he is inadmissible under section 212(a)(6)(C) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

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 to an applicant and to 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 his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. 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).

“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 Board of Immigration Appeals (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 applicant’s wife must be established in the event that she remains in the United States without the applicant, and in the alternative, if she joins the applicant to live in Santo Domingo. 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 a photograph, letters, birth certificates, a marriage certificate, an employment letter, and other documents.

The letters from relatives of the applicant and his wife commend the applicant’s character.

In his affidavit, the applicant states that he has two U.S. citizen children, financially supports his family while his wife cares for the children, and is very close to his wife, children, and other family members. He states that the Dominican Republic’s educational system is poor, that people are suffering from a natural disaster there, and that he would not be able to obtain gainful employment in the Dominican Republic because he does not hold a college degree.

The affidavit by the applicant’s wife states that her husband has always been there for her and her children and they would be hurt economically and emotionally without him. The applicant’s wife indicates that her husband financially supports them and that she no longer works because her two-year-old daughter was always sick. She states that without her husband she will have to turn to the government for assistance. The applicant’s wife states that she does not wish to live in the Dominican Republic and wants her children to be educated in the United States.

The birth certificates in the record show the applicant's daughter, [REDACTED] was born on January 9, 2000, and his son was born on October 20, 1996.

The affidavit of support dated May 8, 2004 reflects that the applicant's wife is a housewife and that her husband earned \$18,748 in 2003.

The May 10, 2004 letter by [REDACTED] conveys that the applicant's husband has been employed there since January 2004, earning \$600 each week.

On appeal, counsel states that the director erred by applying the "exceptional and extremely unusual hardship" standard in the suspension/cancellation of deportation cases of *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001) and *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) here. Counsel further states that the facts in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), *Matter of W-*, 9 I&N Dec. 1 (BIA 1960), and *Matter of Nagi*, 19 I&N Dec. 245 (BIA 1984) are distinguishable from those presented here. Counsel states that the applicant and his wife have been married for 10 years, residing together for most of their marriage. He states that they have two children and recently purchased a house. Counsel states that the applicant has never been charged with or convicted of a crime. He states that the applicant provides for his family's financial and emotional needs. He states that the applicant's daughter has been hospitalized for an eating disorder and that his wife ceased employment to care for her. Counsel states that the applicant's wife has a close relationship with her immediate family who live in the United States, and has no ties to the Dominican Republic, except for her husband. He states that the applicant's wife has been training to drive a school bus and hopes to begin working this fall and that her work schedule will allow her to care for her daughter.

Counsel states that the applicant's wife has lived in the United States for 19 years, and relocating to the Dominican Republic would be difficult because she has limited resources, and her children attend school here and have family and friends in the United States, and opportunities here that are not available in the Dominican Republic. Counsel states that moving to the Dominican Republic would be financially difficult for their house would have to be sold or managed by a property manager, which would add to the family's expenses and worries. Counsel states that the Dominican Republic has high unemployment, a bleak economy, income disparity, and an increasing cost of living. He states that the applicant and his wife may not find employment there. Counsel states that the applicant's mother and three siblings live in the United States; only his father and one sibling live in the Dominican Republic. Counsel states that the Cruz family is integrated into the American lifestyle.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's wife if she were to remain in the United States without the applicant.

The record conveys that the applicant currently provides the sole income to the [REDACTED] household. Counsel indicates that the applicant's wife is training to obtain future employment as a bus driver and her schedule will allow her to care for her daughter. It has not been established that this income would be insufficient to provide for the family's needs. The AAO therefore finds that if the applicant's wife were to remain in the United States without her husband she would not experience hardship beyond that normally experienced by families separated by removal.

The record is insufficient to establish that the applicant's wife would experience extreme hardship if she were to join the applicant to live in the Dominican Republic

The conditions in the country where the applicant's wife would live if she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Counsel states that the Dominican Republic has economic problems and the applicant and his wife may not find employment. Difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

Counsel states that the applicant's wife has lived in the United States since she was 13 years old, is fully integrated into the American lifestyle, and will be traumatized living in the Dominican Republic and separated from her mother, siblings, and nieces and nephews. The AAO recognizes that the applicant's wife's adjustment to the culture and environment in the Dominican Republic will be difficult, but these difficulties will be mitigated by the moral support of her husband and in-laws, which are her family ties to the Dominican Republic. Furthermore, in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The applicant's wife conveys that she is concerned about the well-being of her children if they were to live in the Dominican Republic. As previously stated, although hardship to an applicant's child is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's spouse, as a result of her concern about the welfare of their children, is a relevant consideration.

The applicant's wife asserts that her children will not have the same educational opportunities in the Dominican Republic. In *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986), the court stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." *Id.* at 499.

The AAO finds that the additional factors, which *Matter of Ige* states need to combine with economic detriment to make living in the Dominican Republic extremely hard on the applicant's wife, are missing.

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.

In the final analysis, 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 wife were to remain in the United States without her husband or if she were to join him to live in the Dominican Republic. 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).

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.