

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H 2



FILE: [Redacted] Office: NEWARK, NJ (CHERRY HILL) Date: **NOV 04 2006**

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 PETITIONER:



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, Newark, New Jersey (Cherry Hill), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 45-year-old native and citizen of Turkey. He was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. He presently seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may adjust his status to lawful permanent resident and remain in the United States.

The district director found the applicant to be inadmissible based on his fraudulent attempt to enter the United States using someone else's passport and visa. He further found that the applicant was ineligible for a waiver finding that his U.S. citizen spouse would not face extreme hardship.

On appeal, the applicant re-submits his spouse's statement as well as a letter from her physician, a psychological report, and letters from family members and friends. The applicant maintains that his spouse would experience extreme hardship should the waiver be denied.

Section 212(a)(6)(C)(i) of the Act 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:

(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”

The district director found the applicant inadmissible based upon his use of someone else's passport and visa in order to gain admission to the United States. The applicant does not dispute this finding. Therefore, the AAO finds that the applicant is inadmissible as charged. The question remains whether the applicant qualifies for a waiver.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's U.S. citizen spouse. Hardship to the applicant himself is not a relevant consideration.

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. 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, _____ is a 43-year-old U.S. citizen. She and the applicant met in 1999, and have been married since 2001. The applicant’s spouse has two daughters, ages 19 and 15, from her first marriage. According to the psychological report submitted, the applicant’s spouse’s first marriage was “an unmitigated disaster.” The psychologist opined that the applicant’s spouse suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood. The applicant’s spouse suffers from rheumatoid arthritis, which according to the psychologist report may be further affected by increased stress.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, do not establish that the applicant’s spouse would face extreme hardship if the applicant is denied the waiver. The AAO notes that the applicant has failed to submit any updated documents relating to the family’s financial circumstances, or to his spouse’s medical conditions and mental health. The documents in the record do not support a finding of extreme emotional and financial hardship. The AAO notes that the record suggests that denial of the waiver would result in no more than the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

The AAO has also carefully considered the emotional impact of separation resulting from the applicant’s inadmissibility. A waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances”). The AAO notes that the applicant’s spouse’s grown daughters reside with her in the United States and that the record does not suggest they would

be unavailable to assist her or provide emotional support. Alternatively, the record also does not support a finding that the applicant's spouse would face extreme hardship should she relocate to Turkey. For instance, there is no evidence in the record indicating that medical treatment for rheumatoid arthritis is unavailable or inadequate in Turkey. Although the AAO notes the applicant's spouse reluctance to relocate, and further notes that the statute does not require her to do so, the AAO finds that the applicant's spouse's relocation would not cause extreme hardship. A "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986).

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 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 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 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.