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U.S. Citizenship  
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FILE:

Office: BOSTON, MA

Date:

SEP 17 2008

IN RE:

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

The applicant is a native and citizen of Portugal 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 on March 10, 1990.<sup>1</sup> The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to demonstrate that his spouse would suffer extreme hardship upon his removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 21, 2005.

On appeal, counsel states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility because of the applicant's spouse's medical conditions and a lack of quality health care. *Counsel's Brief*, January 18, 2006.

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.

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<sup>1</sup> The record also indicates that, on August 14, 2003, the applicant was convicted of Breach of the Peace in the second degree under Part XIV, section 53a-181 of the Connecticut General Statutes and was sentenced to six months in jail, which was suspended. The record does not include evidence that would allow the AAO to determine whether or not the applicant's conviction is for a crime involving moral turpitude, a bar to admission under section 212(a)(2)(i)(I) of the Act. The AAO notes, however, that if the applicant's conviction was for a crime involving moral turpitude, he would be eligible for the petty offense exception in section 212(a)(2)(A)(ii) of the Act as he has been convicted of only one crime for which the maximum penalty does not exceed one year and he was not sentenced to a term of imprisonment in excess of six months. Accordingly, the applicant is not inadmissible to the United States on the basis of his 2003 conviction.

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 applicant 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.

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). 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).

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she resides in Portugal or in the event that she resides in the United States, as she is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the applicant’s spouse was diagnosed with significant osteoporosis, for which she takes medications and that the thought of the applicant being removed from the United States makes the applicant’s spouse physically ill. *Counsel’s Brief*, dated January 18, 2006. The applicant’s spouse states that both of her parents have died and that the only family she has are the applicant and her sister, who lives with them. *Spouse’s Statement*, dated December 7, 2005. She explains that she does not want to rely on her sister to care for her because her sister has her own life and her own issues. She states that in addition to osteoporosis she suffers from arthritis, which makes it difficult for her to perform certain activities and that she takes medication for depression. She also states that the applicant supports her financially and emotionally, and that she does not work. The applicant states that his spouse receives medical care through his health insurance, so she is able to go to the doctor whenever she needs to and receive her medications. *Applicant’s Statement*, dated December 7, 2005. He expresses concern that as a mason he will have trouble finding work in Portugal and will not be able to afford his spouse’s medications.

Were she to relocate to Portugal, the applicant’s spouse states, she would suffer emotionally and physically. *Spouse’s Statement*, dated December 7, 2005. She points out that she does not speak Portuguese and that her family is in the United States. She contends that Portugal is a small country with high unemployment and that she is worried about the applicant’s ability to support the family and to afford her medical care. *Id.* She fears she would have a hard time finding work in Portugal to help support herself and the applicant. The applicant

also states that he feels his spouse would be unhappy in Portugal because her family is in the United States. *Applicant's Statement*, dated December 7, 2005..

The AAO notes that no supporting documentation was submitted with the applicant's waiver application. The record does not contain any medical documentation regarding the applicant's spouse's medical conditions or medications. Furthermore, no evidence was submitted to support the applicant's claims regarding economic conditions in Portugal and his inability to find work or to provide for his spouse's health care in Portugal or 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)).

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.

In the present case, the evidence in the record fails to establish that the hardship experienced by the applicant's spouse, whether she remains in the United States or relocates to Portugal, would exceed that normally encountered by the family members of removed aliens. Accordingly, the AAO finds that the applicant has not demonstrated that his spouse would experience extreme hardship if he were to be removed from the United States and is not eligible for a waiver of inadmissibility under section 212(i) of the Act. 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(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.