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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: SEP

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 APPLICANT:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was found 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and 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 with her spouse and child.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated July 16, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erroneously concluded that the applicant willfully misrepresented herself; failed to prove the conclusion with evidence and failed to address the indirect effects of the applicant's inadmissibility on the applicant's spouse through its direct effects on their child. *Form I-290B*, dated August 12, 2003.

In support of these assertions, counsel submits a brief, dated October 10, 2003; copies of CIS records relating to the applicant; a letter from the applicant's spouse, dated March 23, 1999; an affidavit of the applicant, dated October 9, 2003; financial documents for the applicant's spouse; copies of medical records relating to the mother of the applicant's spouse and a letter from a mental health professional, dated September 27, 2003. The entire record was considered in rendering this decision.

The record reflects that on or about February 24, 1999, the applicant was refused admission into the United States on two occasions at Montreal Preflight Inspection. On the second occasion, the applicant admitted to an immigration officer that she was returning to the United States to reside with her United States citizen fiancé although she was attempting to enter the United States with a visitor visa. The record further reflects that during an interview conducted on January 14, 2002, the applicant admitted to making misrepresentations during the February 24, 1999 encounter with immigration officials.

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 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.

Counsel asserts that the applicant did not willfully misrepresent her intentions upon attempting to obtain entry into the United States in February 1999. *Applicant's Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability and Finding of Inadmissibility*, dated October 10, 2003 ("There are no records made by the inspecting officer that [the applicant] was found inadmissible for making misrepresenting statements under 212(a)(6)(c) [sic] of the Act and there are no records that she made any sworn statements or admissions against interest."). Counsel indicates that the record reflects misunderstandings between immigration officials and the applicant owing to the applicant's inability to understand English. *Id.* ("No question was asked by the officer as to whether or not [the applicant] understood this question and her answer was non-responsive."). Despite the assertions of counsel, the record reflects that the applicant displayed sufficient language comprehension during questioning by immigration officials on multiple occasions, including once in the presence of her spouse, a natural born United States citizen.

The record contains a sworn statement of the applicant taken at the CIS office in Phoenix, Arizona on January 14, 2002 in which the applicant is asked, "Were you willfully misrepresenting the fact that Edward was your fiancée [sic] to the U.S. immigration officer (referring to the February 1999 inspection)?" The applicant responded to this inquiry by stating, "Yes, I should have told the U.S. immigration officer that he was my fiancée [sic]." In an affidavit outlining these events, the applicant claims that she made statements to the immigration officer based on her understanding of the term "fiancé" garnered three years earlier at Montreal Preflight Inspection. *Affidavit of Annie Dulin*, dated October 9, 2003. The applicant also states that her son was crying on January 14, 2002 and was taken out of the interview by an immigration officer. She indicates that it appeared that the whole office was shutting down and she signed the sworn statement as she was walking out the door. *Id.* The AAO notes that the applicant implies that she made responses to immigration officials and signed official documents because she was hurried and misunderstood the proceedings, however the record establishes that the applicant had ample opportunity to gain clarification on her immigration situation prior to her Form I-485 interview and could have communicated her misunderstanding of proceedings at the time they were conducted. Although counsel contends that inconsistencies in the record favor the applicant, the AAO finds that these inconsistencies are the result of contradictory testimony provided by the applicant and as a result, call into question the reliability of the applicant's statements and confirm the fact that she has made misrepresentations to CIS in attempting to procure admission into the United States.

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 alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocates to Canada in order to remain with the applicant. Counsel states that the applicant's spouse would suffer economic hardship in abandoning his job and selling his home in the United States and would be unable to sell United States stocks, bonds and mutual funds in Canada. *Applicant's Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability and Finding of Inadmissibility.* Counsel emphasizes the psychological hardship that the mother of the applicant's husband will endure if the applicant's spouse departs from the United States. Counsel states that the mother of the applicant's husband is depressed as a result of her divorce and will grow increasingly depressed if she is separated from her son and grandson. *Id.* Counsel submits a statement from a physician treating the mother of the applicant's spouse indicating that separation from her grandson is not "advisable." *Instructions from Your Physician*, dated August 29, 2003. The AAO notes that the statement does not identify the physician as a mental health professional and does not establish an ongoing relationship between the physician and the mother of the applicant's spouse.

Counsel fails to establish that the applicant's husband would suffer extreme hardship if he remains in the United States maintaining close proximity to his family members, his employment and ownership of his home. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel contends that, if the applicant's spouse remains in the United States in the absence of the applicant, the applicant's husband would be forced to support himself and his mother in the United States while supporting the applicant and their son in Canada imposing financial hardship on the applicant's spouse. *Applicant's Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability and Finding of Inadmissibility.* The record fails to establish that the applicant will be unable to secure employment in a location outside of the United States in order to contribute to her financial security. The record fails to establish that the income of the applicant's spouse is insufficient to meet the identified expenditures imposed on him by the applicant's inadmissibility. Moreover, the U.S. Supreme Court 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.

The AAO notes that counsel's assertions regarding distress to the applicant's child as a result of the applicant's husband taking on two jobs in the absence of the applicant are speculative and unsubstantiated in the record. *Id.* ("Should applicant be forced to return to Canada, her family would become a single parent household, subject to the hardships customarily occasioned by such familial circumstances such as the stress of working possibly two jobs now while simultaneously being the sole provided of his child's emotional support ....and could cause great distress to the child who would then have practically no parental guidance."). The AAO acknowledges the submission of a letter from a mental health professional stating that the applicant's spouse will likely suffer a Major Depression if he relocates to Canada. *Letter from Dennis*

Binaco MA, CISW, dated September 27, 2003. The AAO notes that the evaluating mental health professional caveats his statements by indicating that he has only had a limited amount of contact with the applicant's spouse and that his statements represent only an educated opinion. The letter further advises that the applicant's spouse should receive a full evaluation in order to obtain a "valid prediction." *Id.* The proffered statements by a mental health professional are admittedly speculative and, as such, cannot form the basis of a finding of extreme hardship.

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 AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.