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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK, NJ Date: NOV 20 2007

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 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [redacted] is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to 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 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 to a qualifying relative. *Decision of the District Director*, dated March 22, 2006.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

In the appeal brief, counsel states that the applicant is not inadmissible under section 212(a)(6)(C) of the Act. Counsel states that the applicant and her in-laws attempted to enter the United States at the Lewiston Bridge border crossing in Canada and that [redacted] stated to the border patrol officer that the applicant was not a relative and that he was taking her to visit family in the United States. Counsel states that after further questioning [redacted] retracted his statement and informed the officer that the applicant was his daughter-in-law and they were entering the United States to attend post-wedding celebrations in New Jersey. Counsel states that the applicant remained silent during the exchange between [redacted] and the border patrol officer. Counsel states that on January 6, 2004, the applicant, accompanied by her husband, applied for entry to the United States at Niagara Falls. He states that the applicant disclosed the events of January 4, 2004 to the border patrol officer, and was admitted into the country without requiring a waiver of inadmissibility. Counsel states that the applicant's grandfather died in February 2004 and this event precipitated the couple's decision to remain in the United States and start a family. Counsel states that prior to this the couple planned to move to Israel, where the applicant's husband ([redacted] would pursue Rabbinical studies. Counsel states that the applicant and her husband decided to remain in the United States on account of family ties to the United States and Canada, her husband's pursuit of Rabbinical studies at Beth [redacted] and financial constraints. Counsel states that [redacted]has a flexible schedule working at his father's company as a studio assistant. Counsel states that on March 8, 2004, the applicant and his wife were married in a civil ceremony in Lakewood, New Jersey, and that on March 18, 2004, [redacted] filed an immigrant petition on his wife's behalf. Counsel states that the applicant is not inadmissible for misrepresentation as she was silent during the exchange between her father and the border patrol agent and that the Foreign Affairs Manual at 9, FAM 40.63 N.4.2., indicates that silence or failure to volunteer information does not in itself constitute misrepresentation. Counsel states that for cultural reasons the applicant did not contradict her father-in-law's statements and that even if a misrepresentation were made, it was timely retracted. Counsel states that the applicant reapplied for admission at Niagara Falls two days later and disclosed the events of January 4, 2004 to the border patrol officer and was admitted without the officer's finding that a material misrepresentation had been made. Counsel states that the applicant sought admission to the United States for a legitimate purpose, which was to attend several days of post-wedding

celebrations in Lakewood, New Jersey. He states that a material misrepresentation occurs in connection with an application for a visa or other documents, or with entry into the United States, if the alien is excludable on the true facts. Counsel states that if the true facts were presented to the border patrol officer the applicant would not have been excludable as she was entering the United States for a legitimate purpose. Counsel states that an untimely request for the waiver application was made by Citizenship and Immigration Services, and no evidence was produced supporting inadmissibility.

The AAO finds that the documentation, which is contained in the record, reflects the following. On January 4, 2004, the applicant attempted to enter the United States at the Lewiston Bridge by being smuggled into the country by her U.S. citizen in-laws, [redacted] and [redacted] stated to the border patrol officer that he thought it would be easier to bring the applicant into the United States by claiming they just met and that in their religious community it was customary to help out strangers. A search of the vehicle by the officer revealed it contained items pertaining to marriage. [redacted] stated to the officer that the applicant married his son one week earlier in Toronto, Ontario, Canada. The officer informed the applicant that when she next enters the United States she must have an immigrant petition in her possession.

The record shows that the applicant was granted a B-1 non-immigrant business visitor visa on January 6, 2004, which authorized her to remain in the United States until January 27, 2004. *I-94, Departure Record.* The record indicates that the applicant entered the United States at a different port from the one that was previously used on January 4, 2004.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

It is noted that with regard to the misrepresentation made by [redacted] on January 4, 2004, 9 FAM 40.63 N4.5 states that:

> [A]n oral misrepresentation made on behalf of an alien at the port of entry by the aider or abettor of the alien's illegal entry will not shield the alien in question from ineligibility under 212(a)(6)(c)(i) . . . if it can be established that the alien was aware at the time of the misrepresentation made on his/her behalf.

The aforesaid Foreign Affairs Manual provision conveys that an alien's silence will not shield the alien from an oral misrepresentation made on his or her behalf by the aider or abettor. Thus, the applicant's silence during the exchange between her father-in-law and the border patrol officer will not shield her from inadmissibility under section 212(a)(6)(C)(i) of the Act for a material misrepresentation as the material misrepresentation was made on [redacted] behalf by her father-in-law to assist her entry into the

United States. Although counsel contends that [redacted] made a timely retraction of the misrepresentation, the record indicates otherwise: only after the border patrol officer searched the vehicle and found articles associated with marriage was [redacted] forthcoming about his familial relationship with the applicant. Withholding this information shut off a line of questioning that was material to her application for entry into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) 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 the applicant and her child is 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(a)(9)(B) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen husband. 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).

On appeal, counsel states that the applicant's husband is a religious scholar who is pursuing studies at Beth Medrash Govoha, located in Lakewood, New Jersey. He states that [redacted] would suffer extreme hardship if he abandoned his Judaic studies in the United States to relocate to Canada with his family. He states that moving to Canada would uproot [redacted] from his country of birth and where he was raised. Counsel states that [redacted] would need to find employment in Canada to support his family and would have to abandon his studies due to economic pressures and the difficulties involved in transferring credit to a theological institution. Counsel states that [redacted] would not have the flexibility that he has working for his father's company. Counsel conveys that [redacted] and her husband have a child and are expecting another, as she is seven months pregnant. He states that the couple signed a contract for the construction of a townhouse in Lakewood, New Jersey, and that [redacted] is pursuing Rabbinical studies at Beth Medrash Govoha.

The record contains, among other documents, employment letters, a marriage certificate, bank statements, an affidavit, a birth certificate showing the [redacted] was born on [redacted] a death certificate, and income tax records.

In the affidavit dated March 19, 2004, [redacted] states that the death of his wife's grandfather served as the catalyst in their decision to establish their home in the United States. He states that during that same period of time he decided to further his studies as an advanced rabbinical student in Lakewood, New Jersey. He conveys that he would have hardship and pain if his wife were barred from the United States.

"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 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).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant fails to establish that her husband would endure extreme hardship if he remained in the United States without her.

[redacted] makes no economic hardship claim in the event that he remained in the United States without his wife. The AAO notes the Biographic Information reflects that [redacted] is unemployed. The employment letter dated August 16, 2004, conveys that [redacted] earns $9,000 annually as a part-time employee with the Goldmark Group, Inc. The account information from Maxim Group for December 31, 2003, indicates $255,317.99 is the total value of [redacted] account.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has a U.S. citizen daughter and is expecting the birth of another U.S. child is not sufficient, in itself, to establish extreme hardship. The birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

[redacted] conveys that he would experience hardship and pain if his wife were barred from the United States. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [redacted] if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined the applicant in Canada.

Counsel states that [redacted] would suffer extreme hardship if he abandoned his studies at Beth Medrash Govoha, where he is following a specific course of Judaic studies. However, no documentation in the record establishes that [redacted] is attending a specific course of study at [redacted] that is not offered in Canada. No documentation has been provided to show that [redacted] has been awarded credit that is not transferable to religious institutions in Canada. 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)).

No documentation has been produced to show that [redacted] would not be able to find employment in Canada and would not be able to work and study at a religious institution. Going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

Furthermore, difficulties in finding employment do not constitute extreme hardship. *See, e.g., Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship"); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment in the Philippines is not extreme hardship); and *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985) (The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported.)

Counsel states that [redacted] would be uprooted from his country of birth and where he was raised. Although [redacted] would leave his country of birth and where he was raised, his transition to life in Canada would be eased by the presence of his wife and her family members, who make up his ties to Canada.

Counsel conveys that the [redacted] signed a construction contract for a townhouse in Lakewood, New Jersey. In *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985), the court found that loss on the sale of a house is not extreme or unique economic hardship.

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. 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).

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. *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.