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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ST PAUL, MINNESOTA Date: APR 28 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Algeria, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant noted, on the Form I-601, Application for Waiver of Ground of Excludability, that he has two stepsons, who are his wife's children. A birth certificate in the record shows that the applicant has a U.S. citizen daughter, born on November 1, 2006. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The acting director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. On appeal counsel contended that the evidence shows that the applicant's wife would suffer extreme hardship if the applicant were removed to Algeria.

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.

The record contains a passport that bears the name of [redacted] and a photograph that appears to be of the applicant. A Form I-94W Visa Waiver/Departure Record in that passport confirms that, on May 24, 2000, the applicant was admitted to the United States at Chicago, Illinois, under the name [redacted] for three months. In an affidavit dated October 26, 2004, the applicant stated that he obtained a false passport from an Algerian friend in France, and entered the United States on May 24, 2000 using that passport, which bore the name of [redacted] Notes taken at another interview of the applicant, dated July 29, 2004, indicate that the applicant stated that he obtained his false passport from a friend, nicknamed [redacted] whom he met at a coffee shop.

On appeal, counsel and the applicant did not dispute that the applicant presented a passport issued to another person, and represented himself to be that other person, in order to gain admission to the United States on May 24, 2000, nor did they contest that he is therefore inadmissible.

The AAO finds that the applicant knowingly presented a passport issued to another person, representing himself to be that person, to gain entry into the United States, willfully misrepresented a material fact as contemplated in section 212(a)(6)(C)(i) of the Act, committed fraud as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

> 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 . . ."

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, applicant's stepsons, or the applicant's own child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien 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. 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).

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 record contains letters and declarations, from friends and relatives of the applicant and his wife, that attest to the applicant's industry and good character. The applicant's industry and character are

not directly relevant to the issue of extreme hardship, and those documents will not be further addressed.

A letter from the applicant's wife's ex-husband, father of the children who are the applicant's stepsons, stated that he and his sons have been diagnosed with Attention Deficit Disorder. He stated that he and his ex-wife have a flexible joint-custody arrangement as to the children, but that he would not permit them to move to Algeria.

In a statement dated February 17, 2004, the applicant's wife indicated that her children had become insecure and withdrawn since the applicant's arrest. She stated that the applicant helped her with many chores in their apartment, sharing various responsibilities. She further stated that her sons have learning difficulties and that she is no longer able to help them. Reports from a psychologist further confirm the applicant's wife's sons' learning disabilities.

As was noted above, however, hardship to the applicant's stepsons is not a consideration in adjudicating the application for waiver. The applicant's wife did not explain how her son's learning difficulties would cause her additional hardship if the applicant were removed. The AAO may presume that removal of the applicant would cause some hardship in that regard, but the record contains no argument pertinent to the extent of that hardship.

The record contains an affidavit, dated October 26, 2004, from the applicant's wife. In it, she stated that she has chronic neck and back problems, that she sometimes requires help getting out of bed, removing a sweater, carrying groceries, cooking, and cleaning, and that the applicant helps her.

In her affidavit the applicant's wife stated that the applicant is her confidante and consultant. She further stated "Without [the applicant] to help me care for our boys and to help with the household chores, I could not maintain my work schedule and be as successful as I have been since marrying [the applicant]." Elsewhere in the affidavit she stated, "Without [the applicant's] help I would be unable to work.

A letter, dated October 26, 2004, from a chiropractor states that the applicant's wife was in an automobile accident on May 15, 2003, and as a result has chronic back problems. It further states that she requires two to four chiropractic treatments per month, and that this level of treatment is projected to continue over the next twelve months, after which she is expected to require "some level of supportive care." The chiropractor further stated that, at that time, the applicant's wife was restricted from lifting more than 20 lbs. from the floor, or transporting more than 25 lbs. from one table to another, and that she was obliged to avoid "activities which require prolonged standing, sitting, frequent bending, twisting or lifting from the waist, or exertive activities which place moderate or greater levels of stress upon the spine and/or spinal musculature."

The record contains an affidavit dated March 12, 2004 from the applicant's uncle. In it, he stated that the applicant's wife has had to fill in for the applicant, delivering newspapers from 3:00 a.m. to 7:00 a.m.

In his October 26, 2004 affidavit, the applicant stated that his wife would suffer extreme hardship if he is ordered removed, whether or not she accompanied him, and whether or not she took her sons to Algeria. The applicant stated that, if his wife and his children remained in the United States after he left, she would again be a single mother of two children with learning disabilities, and would not have anyone to help her with her back problems. He stated that, after her divorce from her previous husband, the applicant's wife had to live with her parents, because she was unable to hold a full-time job while maintaining her household and caring for her sons. The applicant stated that, if his wife went to Algeria with her sons, they would face the fears and persecution that he faced there, and, in addition, additional danger because U.S. citizens are often targeted in attacks.

The applicant stated that, if his wife went to Algeria without her sons, she would face the extreme hardship of being separated from her sons, as well as the rest of her family.

In support of the assertion that his wife and her children would face extreme hardship in Algeria, counsel provided a consular information sheet, a human rights report, and a travel warning from the U.S. State Department, an abstract of an article pertinent to health care funding in Algeria, and an Associate Press release pertinent to Algeria.

In his appeal brief, counsel stated that the applicant and his wife have student loan debt of approximately $10,000 and credit card debt of approximately $12,500. He further stated that they have monthly expenses of $3,200 including a $700 monthly payment toward their credit card principal and interest. Counsel stated that the applicant's wife's income is approximately $2,000 per month and will not cover her monthly expenses and debt service.

The record contains a 2003 Form CRP showing that the applicant and his wife paid rent of $11,035 during that year, which equals approximately $920 per month. The record contains an American Express credit card statement dated June 16, 2004 with an outstanding balance of $627.59 and a minimum payment of $15. The record contains a few minor utility bills. The record contains no other evidence pertinent to the monthly expenses of the applicant and his wife.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. Counsel's statement that the expenses of the applicant and his wife exceed her income will not be further considered.

The evidence submitted demonstrates that Algeria is experiencing considerable turmoil. The applicant's wife and her children would be subject to some degree of danger if they went to Algeria. This would doubtless cause some distress, whether or not they were actually subjected to any violence. Further, as was noted by counsel and others, the applicant's wife's ex-husband, the father of the children, would object to their relocation to Algeria. Thus, if the applicant's wife were to follow the applicant to Algeria, she might be forced to do so without her children. This would certainly occasion additional hardship. The AAO also acknowledges that the applicant's spouse has no family or cultural ties to Algeria, and would experience hardship there as the result of Algeria's

more restrictive social norms for women. If the applicant were removed to Algeria, and his wife were obliged to accompany him, this would cause her extreme hardship within the meaning of section 212(i) of the Act. The applicant's wife is not, however, obliged to accompany him to Algeria.

In the appeal brief, counsel stated,

> Prior to [the marriage of the applicant and his wife on June 4, 2002, the applicant's wife] was unable to live independently because of her sons' needs. She and her sons resided at her parents' home in Edina. The time requirements to fulfill the needs of her children as a single mother inhibit her ability to work outside the home at a level to support her family independent of help. [The applicant] provides that help.

The applicant's wife indicated, in her October 26, 2004 affidavit, that she currently lives about one and one half miles from her parents. She stated that her father, in his own real estate appraisal business, requires her assistance with the associated research. She stated that her parents are often absent from their home, sometimes for long periods, and require her assistance caring for their home in their absence. She stated that because of her father's health concerns, her sons must mow her father's lawn and work on his house with him. She also stated that being unable to help her parents if their health deteriorated further would constitute an extreme hardship for her.

The record contains no indication that the applicant's wife could not return to her parents' house with her children. In her October 26, 2004 affidavit, the applicant's wife made somewhat contradictory assertions. First, that without the applicant's assistance with her children she would be unable to work as many hours, and second, that without his assistance she would be unable to work at all. If she lived with her parents she might, or might not, be able to continue her current work schedule, but the AAO does not believe that she would be precluded from working. Although she likely prefers having an apartment with her children separate from her parents, and might be unable to do so without the applicant's additional income, the inability to maintain one's present standard of living does not necessarily constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

The applicant's wife indicated that her husband provided her assistance during her convalescence from a back injury occasioned by an automobile accident. Even if her condition has not improved since that May 15, 2003 accident, however, there is no indication, other than the applicant's wife's conclusory statement, that no one else could assist her. Although she indicated that her sons, because of their ADD, have difficulty carrying out instructions, the AAO is not convinced that they would be unable, at their current age, to help with household chores, especially in view of the assertion that they help her father with house repairs.

Although it was not raised by the applicant and counsel, an additional aspect of hardship is suggested by the record. If the applicant were removed to Algeria, and his wife were to remain in the United States, the conditions in Algeria, though she would not experience them personally, might cause her to worry about the applicant's safety. Although the AAO believes that this concern might

cause hardship to the applicant's wife, the record contains no evidence or argument pertinent to the extent of any such hardship.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). 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 failed to establish extreme hardship to his U.S. citizen wife or U.S. citizen child as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.