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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

FILE: [redacted] Office: PHILADELPHIA, PA Date: AUG 11 2009

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.

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).

Ellen C. Johnson

John F. Grissom,
Acting Chief Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, 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 Georgia 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), so as to remain in the United States with her U.S. citizen husband. The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 20, 2007. The applicant submitted a timely appeal.[1]

On appeal, counsel states that the applicant's husband, [redacted], has no command of the Georgian language and is acculturated to the United States. Counsel further states that Mr. [redacted] would have economic, cultural, and emotional hardships if he relocated to Georgia, which counsel characterizes as a poor, underdeveloped and politically unstable country.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that [redacted] presented a fabricated newspaper article and medical certificates in support of her asylum claim. Based on this evidence, the district director was correct in finding Ms. [redacted] inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting material facts in an effort to influence the outcome of her asylum claim and thereby procure a benefit provided under the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

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[1] The AAO notes that on April 24, 2007 the Field Office Director, Philadelphia, issued a decision dismissing what was characterized as a "Motion to Reopen," filed on February 22, 2007. On May 8, 2007 counsel submitted a letter explaining that the submitted I-290B was meant to be an appeal, not a motion, and requested that the file be forwarded to the AAO. As such, the AAO finds that the field office director did not have jurisdiction over the I-290B and withdraws the decision of April 24, 2007. The matter will be reviewed *de novo* by the AAO.

> (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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not included under section 212(i) of the Act. Thus, hardship to the applicant 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 spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"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 Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship to the applicant's "qualifying relative" 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.

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).

Extreme hardship to the applicant's spouse must be established in the event that he joins the applicant to live in Georgia, and alternatively, if he remains in the United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his affidavit dated November 18, 2006, [redacted] states that he believes that Georgia is an impoverished country with widespread violence and a corrupt government. He states that as an American he would be perceived as wealthy and targeted by criminals. [redacted] states that he will not be able to financially sustain himself and his wife in Georgia and that he is afraid to have a child there. The AAO notes that the applicant holds a law diploma conferred by Tbilisi State University in Georgia.

The submitted U.S. Department of State Consular Information Sheet on Georgia, dated August 25, 2006; and the Georgia Travel Advice, issued by the United Kingdom Foreign and Commonwealth Office, dated October 2006, collectively convey that Americans are advised not to travel to separatist-controlled areas, and that they should, regardless of the region in Georgia, exercise basic security precautions; and that crime against foreigners is a very serious problem in Georgia. The Consular Information Sheet also states that in July 2004 political tensions between the Georgian Government authorities in Tbilisi and the separatist regime in Tskhinvali in Georgia's South Ossetia region resulted in sniper and mortar exchange, and that low-level violence continues, underscoring the potential of instability in the region. A tense truce is said to exist between the Georgian government and the separatist de facto government of Abkhazia. The Consular Information Sheet conveys that medical care in Georgia is limited and that there is a severe shortage of basic medical supplies, including disposable needles, anesthetics, and antibiotics.

In view of that fact of Georgia's tenuous political stability and that [redacted] does not speak the Georgian language, which will significantly limit not only his employability, but his ability to adapt to life in Georgia, the AAO finds that, when considered in the aggregate, these factors are sufficient to show that [redacted] will experience extreme hardship if he joined his wife to live in Georgia.

indicates that since he learned his wife may have to leave the United States he has become depressed and has developed a sleeping disorder and uncontrollable mood swings. The record contains no medical documentation to support this assertion.

Courts 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, 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). 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)).

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and reviewed the evidence in the record. After careful consideration, it finds that [redacted] spouse's situation, if he remains in the United States without his wife, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by [redacted] is not unusual or beyond that which is normally to be expected upon removal. *See Hassan* and *Perez, supra.*

In considering the hardship factors raised here, both individually and in the aggregate, the AAO finds that they fail to establish that the applicant's spouse would experience extreme hardship if he were to remain in the United States without his wife.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.