U.S. Department of Homeland Security
20 Massachusetts Avenue, Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: SAN BERNARDINO Date: MAR 06 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 Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant is 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 record reflects that the applicant is the husband of a U.S. citizen and seeks waiver of his inadmissibility in order to remain in the United States with his wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

Counsel's statement on appeal reads, in its entirety,

> 1. The denial of the I-601 was erroneous in fact and law.
>
> 2. The USCIS officer relied exclusively on outdated information in making his decision to deny the I-601.
>
> 3. The I-601 was filed on September 1999, but the officer failed to consider or give the appealant [sic] the opportunity to present hardship evidence post 1999.

Counsel did not explain in what respect the evidence relied upon in denying the waiver application is "outdated." Counsel did not submit any additional evidence or explain in what way the applicant was denied the opportunity to submit it. Counsel did not further explain his assertion that the denial was based on a factual error, or his assertion that the denial included a legal error. Those arguments cannot be any more directly addressed.

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 copy of the applicant's criminal record (rap sheet) accessed by a fingerprint search. That record shows that the applicant was arrested, on December 17, 1992, under the name [redacted], in Buffalo, New York, for attempting to enter the United States illegally.

A Memorandum of Investigation in the record, dated December 17, 1992, states that the person representing himself to be [redacted] attempted to enter the United States using a Canadian passport issued to [redacted], with a photograph of the person then representing himself to be [redacted] substituted on it. It further states that [redacted] stated that he was born on October 8, 1964 in Syria, and is a citizen of Greece, and

that he entered Canada with his wife, on December 7, 1992, before attempting to enter the United States without her on December 17, 1992.

The record contains a photocopy of the passport described in that report. That passport contains a photograph that appears to be of the instant applicant, thus confirming the fingerprint identification of the instant applicant as the person who presented the passport of [redacted] in attempting to enter the United States. Further, the record contains statements made by the applicant's current wife and counsel that appear to admit that the applicant attempted to enter using someone else's passport as described in the Memorandum of Investigation.

The record contains a photocopy of another passport. That passport contains what appears to be a photograph of the applicant, whom the passport identifies as [redacted].

An investigative report dated May 13, 2003 notes that, although the applicant, while representing himself to be [redacted] represented himself to be a citizen and national of Greece, he now claims to be a citizen and national of Syria.

The AAO finds that the instant applicant, whatever his true identity may be, knowingly presented an altered passport to gain entry into the United States, misrepresented himself to be [redacted] thereby committed fraud and willful misrepresentation 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) of the Act 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 himself is not directly 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 relative. 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).

In an undated declaration the applicant's wife stated that being separated from her husband would be the worst thing ever to happen to her. She stated that it would not be a "mere separation," but akin to losing half of her body, mind, and soul. She concluded that it would be an extreme hardship for her to lose her husband. She also stated that she could not move with him to Syria because it has a poor record pertinent to women's rights. This office notes that, as was discussed above, whether the applicant would properly be removed to Syria or to Greece is unclear, as he has given divergent stories pertinent to his citizenship. Further, the applicant's wife would not be obliged to accompany him.

The applicant's wife has provided no evidence to support her assertions pertinent to the hardship she would face if she accompanied her husband to Syria, and has not even addressed any hardship she might face in Greece.

The applicant's wife also noted that she and her husband own a business that they operate together, and that without him she would be unable to pay the household bills, including their mortgage.

The record contains what purport to be the 2004 and 2005 joint Form 1040, U.S. Individual Tax Returns, of the applicant and his wife. Schedules C attached to those returns show that the applicant operated a used car business. Those Schedules C show that the business returned net profit of $3,805 during 2004 and $23,996 during 2005. The applicant's wife states that she could not operate this business in the applicant's absence, but there is no evidence in the record to support this

assertion or to demonstrate that the applicant's wife would be unable to work in some other capacity and to earn an income equal to or exceeding those amounts. The record contains no other evidence pertinent to financial hardship. The applicant has not shown that his wife would suffer any economic hardship as a result of his absence.

The remaining hardship of which the applicant's wife speaks is the emotional hardship of separation from her husband. The applicant's wife objects to characterizing it as "mere separation." Notwithstanding that the applicant's wife objects to that characterization, the question before the AAO is whether the hardship of separation from her husband would qualify as extreme hardship within the meaning of section 212(i)(1) of the Act.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has a very loving and devoted wife who is 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 applicant's spouse has not asserted hardship beyond that which is typically experienced by spouses separated as a consequence of removal or inadmissibility, nor has the applicant submitted any independent evidence demonstrating that the hardship caused by separation in this case would be extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse 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.