U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

28

[redacted]

FILE: [redacted] Office: ROME, ITALY Date: APR 14 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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 District Director, Rome, Italy. 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 Italy. The applicant is the spouse of a U.S. citizen and the beneficiary of a petition for alien fiancé. The applicant was found inadmissible to the United States pursuant to § 212(a)(6)(C)(i) and § 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and§ 1182(a)(9)(B)(I). The applicant seeks a waiver of inadmissibility in order to reside 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. The application was denied accordingly. On appeal, counsel contends that the applicant's wife is suffering extreme physical, emotional, and financial consequences due to the applicant's inadmissibility. On appeal, counsel submits letters from the applicant's wife's physician, psychologist, friend, and mother. The entire record was reviewed in rendering this decision, and the AAO concurs with the district director's finding that the applicant has failed to establish that his wife will suffer extreme hardship if he is not allowed to enter the United States.

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's knowingly untrue statements to the immigration inspector at the port of entry on March 20, 2003.

Section 212(i) provides, in pertinent part:

> (i)(1) 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 . . ."

8 U.S.C. § 1182(i)(1). Hardship to the alien himself is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was unlawfully present in the United States over 180 days but less than one year. His last departure from the United States occurred on February 26, 2003, and he is seeking readmission prior to three years from that date. It must be noted that, while the bar resulting from inadmissibility under § 212(a)(9)(B)(i)(I) prevents the applicant from seeking admission for only three years from his last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is indefinite. The hardship standard the applicant must meet is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

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 list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 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 in the instant case indicates that the applicant's wife is currently employed as a teacher. Counsel submits medical records regarding her mental and physical health, which is asserted to have been negatively affected by the applicant's absence. On June 29, 2003, [redacted] M.D. wrote that the applicant's wife suffered from stress-induced headaches caused by the applicant's immigration problems. Dr. [redacted] indicated that the applicant's wife also suffered from depression and anxiety that required medical treatment. Dr. [redacted] wrote that the alleviation of the stress factors was necessary for her wellbeing. The record does not establish the basis upon which Dr. [redacted] drew his conclusions regarding the origin of the applicant's wife's headaches, and there is no independent documentation establishing the timing of the onset or the aggravation of the applicant's wife's conditions.

Moreover, on February 4, 2004, Dr. [redacted] wrote that the applicant's wife required ongoing medical and psychological treatment for long-existing medical and psychological difficulties. Dr. [redacted] indicated that the applicant's depression was not of recent origin; rather, it stemmed from pre-existing family problems. Dr. [redacted] also wrote that the applicant's wife's therapy would undergo a serious setback if she were to leave the United States to join the applicant. Dr. [redacted] did not indicate what type and frequency of therapy or treatment the applicant's wife was receiving, nor does the record contain documentation establishing that suitable therapy is unavailable in Italy. Similarly, the evidence does not establish that treatment for the applicant's wife's migraine headaches, described in the letter from [redacted] M.D., is unavailable in Italy.

The medical and psychological evidence does not establish the unavailability of treatment in Italy. There are no other reasons presented to the effect that the applicant's wife would suffer extreme hardship should she choose to join the applicant in Italy. On the contrary, other worries expressed by the applicant's wife's friends and family concern her desire to have a family with the applicant and simply to be reunited with him. Relocation to Italy would ameloriate these issues.

There is no documentation on the record to establish that the applicant's wife would suffer extreme hardship if she remains in the United States, continuing her employment, psychological therapy, and generally stable situation. 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 would face extreme hardship if the applicant is refused admission. Rather, the record demonstrates 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.

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 a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation or involuntary relocation nearly always results in hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the

hardship, which meets the standard in INA § 212(i), be above and beyond 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 wife as required under INA §§ 212(i) and 212(a)(9)(B), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B). In proceedings for application for waiver of grounds of inadmissibility under §§ 212(i) and 212(a)(9)(B) 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.