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412

FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE Date: **AUG 19 2005**

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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife and adjust his status to permanent resident.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated April 30, 2004.

On appeal, counsel for the applicant contends that if the applicant is prohibited from remaining in the United States his spouse will suffer extreme hardship, as she has a history of epilepsy and related health problems, and she is unable to work. *Brief in Support of Appeal*, dated July 12, 2004. Counsel asserts that the applicant's spouse's health condition will be aggravated should she relocate to Nicaragua. *Id.*

The record contains a statement from the applicant dated July 22, 2004; a statement from the applicant's spouse dated July 22, 2004; a statement from the applicant submitted as an addendum to Form I-601 on April 11, 2002; a statement from the applicant's spouse submitted as an addendum to Form I-601 on April 11, 2002; copies of medical records of the applicant's spouse; a copy of the marriage certificate of the applicant and his spouse; copies of documents to show that the applicant's spouse and two of the applicant's three children are lawful permanent residents of the United States; copies of a deed and related documents showing that the applicant owns property in the United States; copies of tax and financial documents of the applicant and his spouse, and; documentation of the applicant's prior immigration violations and conviction for drunk driving. The entire record was reviewed and considered in rendering this decision.

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.

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.

The record reflects that the applicant sought to procure admission into the United States by presenting a fraudulent passport and making a willful misrepresentation of a material fact. Specifically, upon his attempted entry the applicant presented a Guatemalan passport that contained his photograph but the name and biographic information of another individual. The applicant claimed the identity of the person named in the document and falsely represented that the included B-1/B-2 visa was issued to him. Accordingly, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

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 the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, counsel for the applicant contends that if the applicant is prohibited from remaining in the United States his spouse will suffer extreme hardship. *Brief in Support of Appeal*, dated July 12, 2004. The applicant submits copies of documentation of his spouse's medical treatment, which reflects that she has suffered from epilepsy since childhood. *Doctor's Notes Submitted on Appeal*, dated from March 9, 1995 to May 3, 2002. Doctor's notes report that the applicant's spouse has a history of three to four seizures a month, yet some months she has had none, and one month she had nine. *Id.* Sometime during 2001 or 2002, the applicant's spouse was involved in a bus accident on the Golden Gate Bridge in which she suffered a head injury, and since then she has experienced stress and depression. *Id.* On April 7, 2003, the applicant's spouse expressed suicidal ideas to a medical professional, and she was referred to a crisis clinic. *Id.* Doctor's have prescribed medication to treat her health conditions. *Id.* In May 2002, the applicant's spouse received treatment for vaginal hemorrhaging and anemia. *Id.*

Counsel states that the applicant's spouse is incapable of work and totally dependent on the applicant for support. *Brief in Support of Appeal* at 4. The applicant's spouse stated that the applicant is the sole source of income for their household, as she has cared for their children. *Statement of Applicant's Spouse Submitted with Form I-601*. She further stated that she is dependent on the applicant for emotional support. *Id.* The

applicant indicates that his spouse has begun receiving assistance from a local organization titled Becoming Independent. *Applicant's Statement on Appeal* at 1.

Upon review, the applicant has not sufficiently documented that his spouse will suffer extreme hardship should he depart the United States. The evidence of record shows that the applicant's spouse suffers from epilepsy. *Doctor's Notes Submitted on Appeal*. However, the severity of her condition and the effect it has on her ability to engage in employment and perform other tasks is not clear. As the applicant works, presumably full-time, it appears that his spouse remains at home without supervision. The applicant has not indicated that his spouse requires assistance or ongoing supervision. Further, the applicant's spouse stated that she has provided care for their three children, which shows that she is capable of performing employable tasks of significant responsibility. *Statement of Applicant's Spouse Submitted with Form I-601*. Doctor's notes reflect that the applicant's spouse has received prescription medication to treat her condition. *Doctor's Notes Submitted on Appeal*. While the record contains no clear indication of the overall effectiveness of such medication, it is assumed that she has benefited. The applicant has not described the daily experience of his spouse, yet, the fact that she was riding on a public bus in 2001 or 2002 suggests that her lifelong epilepsy has not prevented her from traveling independently and performing normal functions. Thus, while epilepsy has undoubtedly posed significant challenges for the applicant's spouse, the evidence of record does not show that she is unable to work such that she is financially dependent on the applicant.

Counsel references an injury that the applicant's spouse received in a bus accident. *Brief in Support of Appeal* at 1. The applicant has provided no documentation of treatment his spouse received as a result of this accident that would establish the nature and severity of her injuries, and whether she continues to experience lasting effects. 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)). As an example of the lack of documentation and explanation of the accident, it is noted that the applicant has not established the date of when this accident occurred. In counsel's brief and statements from the applicant and his spouse, they indicate that the accident occurred in 2002. Yet, in a doctor's note dated April 7, 2003, he noted that the applicant's spouse was involved in an accident "2 [years] ago." *Doctor's Notes Submitted on Appeal submitted with Form I-601*. A doctor's note dated September 28, 2001 noted that the applicant's spouse had an "Accident in [a] bus" and that she was "doing fairly well" as of the date of the note. *Id.* The applicant has not asserted or shown that the accident was connected to his spouse's epilepsy, or that it will contribute to hardship she will suffer if the applicant departs the United States.

Counsel states that the applicant's spouse has an "unresolved history of ongoing . . . serious physical illness including seizures, vaginal bleeding, and anemia." *Brief in Support of Appeal* at 2. Counsel purportedly submits medical records from 2001 and April 18, 2002 that reflect that the applicant's spouse received treatment for vaginal bleeding and anemia in both 2001 and 2002. *Id.* However, the medical record that counsel claims was generated in 2001 is undated. The document lists the applicant's spouse's age as 39. As she was born on December 13, 1962, she turned age 39 on December 13, 2001, reflecting that it is more likely that the document was issued in 2002. The document was issued by Marin General Hospital. The medical record dated April 18, 2002, also issued by Marin General Hospital, reports that the applicant's spouse was admitted for treatment of anemia and vaginal bleeding on that date. The April 18, 2002 document notes that her past history of illness is "healthy except epilepsy." It is unlikely that the Marin General Hospital would treat the applicant's spouse for anemia and vaginal bleeding in 2001, and upon treating her for the same

condition again in 2002 state that she has no history of the illness. Thus, counsel's assertion that the undated record was generated in 2001 is unpersuasive, and the applicant's spouse's conditions of anemia and vaginal bleeding appear to have been a single incident in April 2002. Counsel's assertion that anemia and vaginal bleeding are ongoing serious physical illnesses of the applicant's spouse is not supported by the evidence of record. Thus, the applicant has not established that these conditions will generate hardship for his spouse should he depart the United States.

Counsel states that the applicant's spouse suffers from an "ongoing and unresolved history of serious mental disorders including severe depression, post traumatic stress disorder, [and] serious insomnia." *Brief in Support of Appeal* at 2. Doctor's notes dating back to 1995 reference the applicant's spouse's reports of insomnia. A doctor's note dated April 7, 2003 indicated that the applicant's spouse exhibited "severe depression" and "PTSD (Post-traumatic Stress Disorder)," and she expressed suicidal ideas, causing her to be referred to a crisis clinic. *Doctor's Notes Submitted on Appeal*. However, the applicant has not submitted any documentation to show that his spouse has received psychiatric care or evaluation for mental disorders, or that the identified conditions persist. Depression and PTSD are referenced only once in the eight years of medical notes submitted by the applicant. The single handwritten note is by an unidentified author due to an illegible signature, and thus the AAO is unable to determine the qualifications of this individual to identify such mental disorders, or whether the notes represent initial observations or formal diagnoses. The record contains no evidence of follow-up care. Again, 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. at 165. Accordingly, the applicant has not sufficiently shown his spouse's current status with respect to her mental health, such that the AAO can weigh this factor in determining whether she will suffer extreme hardship.

As noted by the district director, the applicant has not indicated or submitted documentation to show that his spouse will not receive adequate medical care or medication should she relocate to Nicaragua. On appeal, counsel asserts that "there is no requirement that [the applicant] prove that his wife could not be treated in Nicaragua" *Brief in Support of Appeal* at 1-2. Yet, the availability of adequate medical care in the country to which a qualifying relative would relocate is a significant consideration in determining whether the relative will suffer extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-566. For example, if the applicant's spouse requires prescription medication and specialist care to reduce the effects of epilepsy that are not obtainable in Nicaragua, such lack of medical care would lend weight to a finding of extreme hardship. Despite the district director's identification of this issue, the applicant has failed to respond on appeal. The record does not suggest that the applicant's spouse will not receive sufficient care in Nicaragua.

The applicant indicates that his spouse has begun receiving assistance from a local organization titled Becoming Independent. *Applicant's Statement on Appeal* at 1. However, the applicant has not provided documentation of this assistance, or explained the nature or necessity of the help provided. Once again, 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. at 165.

The applicant's spouse stated that she is dependent on the applicant for emotional support. *Statement of Applicant's Spouse Submitted with Form I-601*. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant if she chooses to remain in the United States. However,

her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The evidence of record reflects that the applicant's spouse would possibly incur some financial loss if compelled to relocate to Nicaragua with the applicant. If she remains in the United States, she would likely enter the workforce, and she would likely be compelled to accept a lower level of income. The record, however, does not establish that the applicant's spouse will be unable to support herself as a result of the applicant's absence from the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Based on the foregoing, the applicant has not shown that his spouse's health status requires his care and financial support. Nor has the applicant established that his spouse's condition will be unusually exacerbated due to his inadmissibility. The applicant has not shown that his departure from the United States will create economic or emotional hardship for his spouse that is unusual or beyond that which would normally be expected upon deportation. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.