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FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: OCT 25 2006

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 Canada 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 seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant 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 and reside with his U.S. citizen spouse and children (his stepchildren).

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative, his spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 25, 2005.

On appeal, counsel for the applicant contends that the applicant's wife, [REDACTED] will suffer extreme hardship if the applicant is prohibited from remaining in the United States and that the District Director failed to give proper weight to the evidence, misinterpreted and misstated the law, and misunderstood the nature of the evidence submitted. *Notice of Appeal (Form I-290B)*, received March 30, 2005; *Brief in Support of Appeal*, received May 2, 2005. Counsel asserts that the applicant's wife is dependent emotionally and financially on the applicant, is on the verge of a breakdown, and that the pending removal of the applicant will have a disastrous affect on her. *Brief in Support of Appeal, supra*. Counsel also asserts that the combination of her family's deterioration and her own emotional and financial loss is the extreme hardship the applicant's wife will face if the applicant is forced to return to Canada. *Id.*

In support of these assertions counsel submits a report entitled "Psychological Evaluation, Diagnostic Impression and Psychometric Test Results" for the applicant and his wife by [REDACTED], Family, Forensic, Educational Psychologist. *Psychological Report*, dated March 28, 2005. The Psychological Report lists five "dates of service" between March 17 and March 23, 2005, and 11 different tests administered to both the applicant and his wife during that timeframe. There is no indication as to the amount of time spent on administering the tests or otherwise interacting with the couple during this period, but the "two components of [the] interactions, treatment considerations and assessment" were described as "to evaluate and treat [REDACTED] for her emotional burdens" and "to evaluate the extent and form of the difficulties she would have as a result of her possibly changing family circumstances – particularly, her husband's possible deportation"; it concludes that the applicant's wife is "anxious and depressed" and "emotionally and physically exhausted," causing tension that could escalate into Post-Traumatic Stress Disorder and could require "hospitalization as a result of escalating physical and emotional symptoms." *Id.* The record also contains a statement from the applicant's wife indicating how attached she and her children are to the applicant and how he has served as a father to her children; that they all suffered emotionally when the applicant left after the events of September 11, 2001, and that she would not be able to properly support her family without her husband's moral and financial support. *Statement by [REDACTED]* dated September 19, 2003. The record also includes income tax records from 2000 through 2002 and other information related to the couple's finances; letters confirming

the employment of the applicant and his wife in 2003; and photographs of the family together. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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 in pertinent part:

- (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 in October and November 2001 the applicant attempted to enter the United States from Canada claiming to be a visitor, and presenting his Canadian identification; he was denied entry on both occasions. At that time he was married to his current wife and residing in Los Angeles. For these prior misrepresentations, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of* [REDACTED] 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* [REDACTED] 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of* [REDACTED] the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant 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. In examining whether extreme hardship has been established, 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). Hardship the applicant himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Thus, hardship suffered by the applicant or the couple's children will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's U.S. citizen wife.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "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." *[REDACTED]*. *INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also* *[REDACTED]* *INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. The AAO notes that the applicant's wife and children would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The record reflects that the applicant was born in Canada in 1974; he entered the United States as a visitor in 1990 and resided in the United States until 2001. In 1999 he married *[REDACTED]*, a lawful permanent resident who became a U.S. Citizen in 2002; she has three children who, according to counsel's Brief, were 13, 12 and 11 years old in 1995 and are U.S. citizens; there are no birth certificates or other proof in support of this assertion in the record; however, the children appear as dependents on *[REDACTED]* tax forms. Based on statements by the applicant's wife, which are supported by the Psychological Report, *supra*, the couple enjoyed a close interdependent relationship and the applicant was a supportive husband and father; they were doing well until the events of September 11, 2001 led to difficult and stressful times for the family. According to statements from the applicant and his brother during interviews conducted at the port of entry in Detroit in 2001, the applicant and his brother were living in California and were contacted by the FBI shortly after September 11, when attention focused on them as nationals of Canada of Lebanese descent. As a result, and as advised by their attorney, they returned to Canada to avoid potential removal. The applicant states that he was stopped at the border when trying to return in 2001 and that he finally reentered the United States without inspection to join his wife and children in November 2002. Tax returns from 2000 to 2002 are included in the record: the couple filed separately, the applicant reporting income of \$9,800 in 2000 and \$23,300 in 2001, after business expenses, from his real estate sales; and his wife reporting \$16,100 in 2000; \$13,400 in 2001; and \$29,600 in 2002. Letters from employers indicate that in 2003 the applicant was employed by Prudential California Realty as a full time licensed real estate sales agent, paid by commission;

and his wife was employed by the Diplomat American Board of Ophthalmology as a receptionist with an annual salary of \$27,040. The applicant's parents are Canadian citizens, residing in Canada; his brother has resided in California part time since approximately 1991; he states that he resides part time in Canada. There is no evidence in the record that the applicant's wife has significant family ties in the United States or elsewhere, other than references to her sister and parents in the Psychological Report. The Psychological Report also refers to an abusive former husband and prior abuse suffered by the applicant's wife and oldest son; however, there is no medical or other supporting evidence of such abuse in the record.

Based on a review of all of the evidence in the record, the AAO cannot conclude that the applicant's wife will experience extreme hardship if the applicant is prohibited from remaining in the United States. The applicant's wife reports that she depends on the applicant financially. However, they are both working, and the record reflects that she is able to earn a living and be financially independent; moreover, there is no indication that the applicant would not be able to obtain employment in Canada to supplement the family income. Clearly the applicant's wife will suffer emotional and personal hardship if she is separated from her husband and faced with raising her children on her own, and the Psychological Report confirms that she suffers from anxiety and is depressed with the thought of living without his support and love. However, it is important to note that the Psychological Report is based on a series of tests administered during one week in March 2005 and interactions with staff during that time, and it does not indicate what treatment can or should be recommended to reduce the level of anxiety and stress suffered by the applicant's wife. The record lacks a clear and thorough assessment from a medical professional to determine that, as stated in the summary conclusions of the Psychological Report, the applicant's wife is on the verge of a breakdown and likely to suffer from Post-Traumatic Stress Disorder and be hospitalized if separated from her husband. Without adequate analysis from a medical professional, the AAO is unable to conclude that the anxiety suffered by the applicant's wife is extreme or untreatable. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of [REDACTED]* 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the applicant should they remain in the United States. However, based on the record, his wife's situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *[REDACTED]* 927 F.2d 465, 468 (9th Cir. 1991). For example, *[REDACTED]* 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. *[REDACTED]* 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 individuals being deported.

Again, it is noted that, to avoid separation, the applicant's wife and children may relocate to Canada with the applicant if they choose, though they are not required to do so. As English speakers, they would not be forced to adjust to an unfamiliar language, and there is no indication in the record that the family would suffer

adverse economic consequences or be unable to meet their financial needs in Canada. The record notes that the applicant's parents reside in Canada; the couple would therefore have some familial ties to help in adjusting to relocation.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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.