

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:



Office: ROME, ITALY

Date:

DEC 14 2001

IN RE:

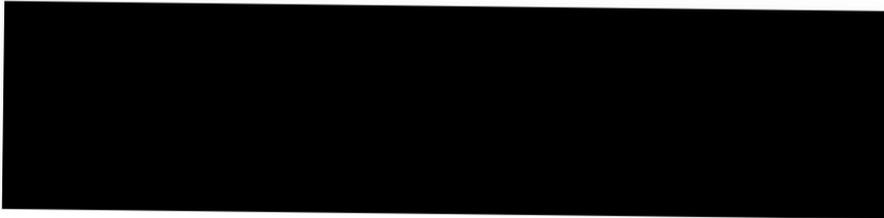
Applicant:



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:



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 District Director, Rome, Italy, denied the waiver application. 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 Egypt 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 traveling to the United States on a K-1 fiancée visa while still married to another person. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated October 31, 2005.

On appeal, the applicant's wife states that "[w]hen all the factors and circumstances of this case are considered in the aggregate, the waiver should be granted." *Form I-290B*, dated November 28, 2005. Additionally, the applicant's wife states that "[c]ase law holds that a misrepresentation or fraud must be knowing and wilful [sic]." *Id.*

The record includes, but is not limited to, counsel's letter and brief, statements from the applicant and his wife, evidence of the applicant's divorce from his first wife, and a marriage certificate for the applicant and his second wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 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 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...

In the present application, the record indicates that on October 5, 1996, the applicant married [REDACTED], an Egyptian citizen, in Egypt. On March 17, 1997, the applicant applied for and received a K-1 fiancée visa, with the intent to marry a United States citizen. On December 18, 2003, the applicant and [REDACTED] were divorced in Egypt. On June 14, 2004, the applicant married [REDACTED], a United States citizen, in Egypt. On June 26, 2004, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the Form I-130 was approved. On August 12, 2004, the applicant filed a Form I-601. On October 31, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his spouse.

Regarding the applicant's misrepresentation on his K-1 fiancée visa application, counsel states that the applicant "went to Ohio in 1997 for a couple of weeks to visit an American friend...This English speaking woman was the one who invited him to visit. She filled out the forms and told him where to sign. She did not speak Arabic...[The applicant] speaks English...The USCIS does not mention whether he understood the statement signed under penalty of perjury on March 17, 1997 and that he did intend to marry an American citizen...The fact of the matter is that once [the applicant] was in Ohio and the American friend brought up the subject of marriage, [the applicant] objected and disclosed that he was married and that he did not want to break the law. He quickly returned to his family in Egypt." *Memorandum of Law attached to Form I-290B*, pages 2-3, undated. The AAO notes that the applicant speaks English, and on several documents that he filed with the K-1 fiancée visa application, he failed to disclose that he was already married. His assertions do not overcome the fact that he signed several documents under penalty of perjury. It was his responsibility to understand what he was signing. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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). Counsel asserts that the applicant's "situation is different from many of the applicants in previously decided and denied waiver cases. Given the one and only one encounter with INS in 1997 the level of hardship to be proven should not rise to the very strict standard of extreme hardship." *Memorandum of Law attached to Form I-290B, supra* at 6. The AAO notes that section 212(a)(6)(C)(i) of the Act does not distinguish between varying degrees of misrepresentation, and all 212(i) waivers to waive a 212(a)(6)(C)(i) ground of inadmissibility must establish extreme hardship to the qualifying relative(s).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's wife "is suffering extreme hardship, both emotionally and financially, due to her separation from [the applicant]." *Letter from counsel*, dated January 31, 2007. Counsel states that based on "the fervent anti-American sentiment that has steadily increased over the past several years," the applicant's wife cannot join the applicant in Egypt. *Id.* "Both [the applicant's wife and the applicant] encountered increased hostilities towards Americans and those who associate with Americans on her last two month visits to Egypt in 2006...In the two and a half years since their marriage, in June 2004, [the applicant and his wife's] acceptance as U.S. citizen married to an Egyptian citizen in Egypt has decreased appreciably. At the time of their marriage in 2004, [the applicant's wife and the applicant] had felt relatively comfortable to be seen in public together in Egypt. However, during their 2006 visits, their experiences of fair treatment and feelings of security had diminished to a point where [the applicant's wife] no longer felt, nor would she likely be, safe living in Egypt as an American woman married to an Egyptian man." *Id.* The applicant's wife states when she traveled to "Egypt in November 2006 [she] felt unaccepted and outcast." *Letter from [REDACTED]*, dated January 23, 2007. The AAO notes that the applicant's wife has not traveled to Egypt in a year. *See facsimile from [REDACTED]*, dated November 1, 2007. Counsel states that the applicant's wife "has suffered economically by being forced to incur round trip travel costs to Egypt, twice in 2006, simply to be with her husband...[The applicant's wife] has incurred significant expenses in travel and communication expenses to be with her husband since their marriage in June 2004. Given [the applicant's wife's] modest income of \$22,000 per year, earned as an administrative assistant, these travel and communication costs constitute significant hardship." *Letter from counsel, supra.* The applicant's wife states that her "health is alright[,] aside from [her] allergies, however, the extreme heat of 110-115 degrees in Luxor in the summer months is very difficult for [her]. The change of diet has been an unpleasant experience for [her] as well. [They] have talked about raising a family. It is very scary for [her] to think of having a home birth in Egypt without the medical care available to [her] in the United States." *Statement of Hardship by the applicant's wife*, dated November 28, 2005.

The record establishes that the applicant's spouse would suffer extreme hardship if she joins the applicant in Egypt, because of the treatment she has received in Egypt. However, the applicant did not establish that his wife would suffer extreme hardship if she stays in the United States without the applicant. The applicant and his wife have never lived together and it has not been established that his wife cannot provide for her daily needs without him. Additionally, the AAO notes that there is no evidence that the applicant has ever contributed financially to his wife and the record fails to demonstrate that the applicant is unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States

Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s wife will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States.

A review of 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.