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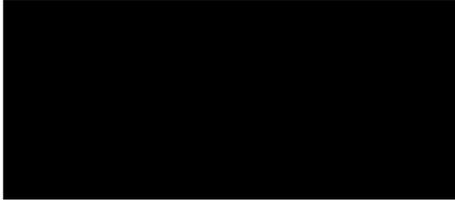
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK, NJ

Date: FEB 13 2007

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Excludability under sections 212(i) and 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and (h).

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Trinidad 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation; and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and he seeks a waiver of inadmissibility pursuant to sections 212(i), 8 U.S.C. § 1182(i), and 212(h), 8 U.S.C. § 1182(h), of the Act in order to remain in the United States with his U.S. citizen wife and his naturalized citizen mother and lawful permanent resident father.

The district director denied the Application for Waiver of Grounds of Excludability (Form I-601), finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative if the waiver was denied. *Decision of the District Director*, dated April 11, 2005.

Counsel, on appeal, states that the letter from Dr. [REDACTED] which was submitted in response to the Notice of Intent to Deny (NOID) dated March 7, 2005, indicates that the applicant's wife has been diagnosed as having major depression with bipolar features. Counsel further states that the letter from her treating physician, Dr. [REDACTED] which was submitted as a supplemental response to the NOID, certifies that the applicant's wife suffers from multiple sclerosis and patients who are in the advanced stages of this disease can become disabled and wheelchair bound. Counsel states that the director's decision failed to reference the letter from Dr. [REDACTED] the treating physician of the applicant's wife. Counsel therefore asserts that the director failed to properly consider the letter, although it is relevant and material evidence, in rendering her decision. *Form I-290B*, dated May 4, 2005.

The record contains: letters from the applicant's and his wife's family members and friends; letters from Dr. [REDACTED], which are dated March 24, 2005 and January 8, 2003; letters from Dr. [REDACTED] Perkari, which are dated January 18, 2005, December 19, 2002, October 5, 2001, and June 18, 2003; copies of medical records relating to the applicant's wife; copies of the household bills; photographs; letters, dated March 17, 2003 and October 17, 2001, that relate to the health condition of the applicant's father; a physician referral form relating to the applicant's father; documentation concerning the applicant's education in the United States; income tax records; copies of a marriage certificate, a birth certificate, the Certification of Naturalization of the applicant's mother and his two brothers, the Alien Registration Receipt Card of the applicant's father; the Florida Bar card of the applicant's sister-in-law; a letter, dated November 6, 2001, from the applicant's U.S. probation officer; a Form I-601; the Form I-130 and documentation submitted in support of the form such as sworn statements and tax records; the document entitled "Judgment in a Criminal Case (For Offenses Committed On or After November 1, 1987)" for the criminal offense of Interstate Production and Transfer of Document-Making Implement, 18 U.S.C. § 1028(a)(5); the document entitled "Record of Deportable/Inadmissible Alien"; the Form I-275 and the applicant's sworn statement, which are dated May 3, 1990; and other evidence in the record. 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.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that on or about May 3, 1990 the applicant applied for entry into the United States with a photo-substituted passport and elected to withdraw his Application for Admission. On April 2, 1994, the applicant used his deceased brother's passport and visa to enter the United States. On July 29, 1998 the applicant pled guilty to the offense of Interstate Production and Transfer of Document-Making Implement, 18 U.S.C. § 1028(a)(5), for attempting to purchase a counterfeit U.S. Immigration and Naturalization Service admission stamp. *Decision of the District Director*, dated April 11, 2005; *Judgment in a Criminal Case*, dated August 31, 1998.

The AAO will first address the section 212(i) waiver for inadmissibility to the United States.

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 and his parents. 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 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). *Matter of Cervantes-Gonzalez* provides a list of factors the Bureau of Immigration Appeals (BIA) 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. *Id.* at 566.

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).

On appeal, counsel states that the director's decision failed to reference the letter from Dr. [REDACTED] the treating physician of the applicant's wife. *Form I-290B*, dated May 4, 2005.

The AAO agrees with counsel in that the director's decision failed to address the March 24, 2005 letter from Dr. [REDACTED]. Notwithstanding this, the AAO does not find that the evidence in the record, including the letters from Dr. [REDACTED] and the letters from Dr. [REDACTED], establish that the applicant's wife and parents would endure extreme hardship if he is deported.

The letters from Dr. [REDACTED], a neurology and movement disorders specialist, are dated January 8, 2003 and March 24, 2005. The January 8, 2003 letter states that the applicant's wife "was seen in a neurological evaluation on March 13, 2002." Dr. [REDACTED] states that she has seen the applicant's wife in the office every 6-12 weeks since her diagnosis of multiple sclerosis, which she indicates is a chronic progressive disorder and the applicant's wife could be wheelchair bound in its advanced stages. *Letter from Dr. [REDACTED]*, dated January 8, 2003.

In the March 24, 2005 letter, Dr. [REDACTED] indicates that she has known the applicant's wife since March 2002. She states that the applicant's wife suffers from multiple sclerosis, a chronic progressive disorder with remissions and exacerbations, and that she "had a relapse in August 2003 when she was

admitted to Bayshore Community Hospital in Holmdel, New Jersey.” In advanced stages of the disease, Dr. [REDACTED] states that patients can be disabled and wheelchair bound. According to Dr. [REDACTED] Khakoo, the applicant’s wife is “currently on medication to prevent relapse of the disease and is stable. The medication also helps to remain functional and may delay the onset of disability from disease.” She states that the applicant’s wife is “followed up at my office regularly at 4-6 months interval or sooner if needed.” *Letter from Dr. [REDACTED]*, dated March 24, 2005.

The AAO finds that the record is silent about how serious the applicant’s wife multiple sclerosis is. There is no documentary material describing the medication that she takes for the disease that has been prescribed by her treating physician. There is no documentation about her relapse in August 2003 and admittance to Bayshore Community Hospital. There is no documentation concerning the specific diagnosis and prognosis of her disease. Although Dr. [REDACTED] indicates that patients with multiple sclerosis can be disabled and wheelchair bound, her statement is generalized and does not relate to the specific circumstances of the applicant’s wife. 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)). Without documentary evidence specifically relating to the applicant’s wife’s multiple sclerosis, the AAO lacks sufficient documentation to assess the true severity of her disease and the impact the applicant’s departure would have on her condition. In addition, there is no indication that her husband’s presence is necessary to assist her with her daily activities.

The letters from Dr. [REDACTED] concerning the applicant’s wife are dated January 18, 2005, December 19, 2002, and October 5, 2001. In the October 5, 2001 letter, Dr. [REDACTED] an internist, states that the applicant’s wife suffers from major depression with BiPolar features, hypothyroidism and recurrent pilonidal cyst. Dr. [REDACTED] indicates that the applicant’s wife “is prone to nervous breakdowns,” and that her mother takes care of her schizophrenic brother. Dr. [REDACTED] indicates that the applicant’s wife is emotionally dependent on her husband, and that her fragile mental status might get worse due to her husband’s departure. *Letter from Dr. [REDACTED]*, dated October 5, 2001.

In the December 19, 2002 letter, Dr. [REDACTED] states that the applicant’s wife has been a patient for the past twelve years. Dr. [REDACTED] states that the applicant’s wife suffers from major depression with BiPolar features, hypothyroidism and recurrent pilonidal cyst. Dr. [REDACTED] indicates that her depression is familial, her brother is a paranoid schizophrenic and maternal uncle is institutionalized permanently for schizophrenia. Dr. [REDACTED] states that the applicant’s wife’s “fragile mental status might get worse since she is emotionally dependent on him.” *Letter from Dr. [REDACTED]*, dated December 19, 2002.

Dr. [REDACTED] letter, which is dated January 18, 2005, states that the applicant’s wife suffers from major depression with bipolar feature, hypothyroidism and recurrent pilonidal cyst. Dr. [REDACTED] indicates that the applicant’s wife is emotionally dependent on her husband and that she needs his emotional and physical help when she has recurrent pilonidal cyst, a condition for which she has had surgeries in the past. *Letter from Dr. [REDACTED]* letter, dated January 18, 2005.

The letters from Dr. [REDACTED] a practitioner in internal medicine, are not persuasive in establishing that the applicant’s wife suffers from a mental illness. Dr. [REDACTED] states that the applicant’s wife has been a patient for over 12 years, and that she suffers from major depression with BiPolar features. The AAO notes that there is no evidence in the record suggesting that Dr. [REDACTED] an internist, is certified to diagnose and treat

mental illnesses. Nor is there evidence in the record that shows that the conclusions reached by Dr. [REDACTED] as to the mental health of the applicant's wife relate to an evaluation performed by a certified mental health professional. Thus, the value of Dr. [REDACTED] statements, as they pertain to the mental health of the applicant's wife, are diminished. 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)).

Based on the facts here, the evidence in the record fails to establish that the applicant's wife or parents would suffer extreme emotional hardship if he were deported. The AAO acknowledges that the applicant's wife and parents will endure emotional hardship as a result of separation from the applicant should they remain in the United States. However, the applicant has not established that such consequences are more severe than those typical to individuals separated as a result of deportation or exclusion. 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 instance, *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. Thus, based on the evidence of record, the applicant has not shown that family separation would cause his wife or parents to suffer emotional hardship that rises to the level of extreme hardship.

The AAO notes that, if the applicant's wife or parents remain in the United States, they will continue to have an extensive network of family members on which to call for emotional support. The applicant's wife has a mother and in-laws that live in the United States. The applicant's parents have two adult sons who live in the United States. Thus, the wife and parents of the applicant will not be left alone.

It is noted that the record does not establish that the wife or the parents of the applicant are financially dependent on him.

The applicant has not shown that relocation to Trinidad is not viable for his wife or his parents. There is no indication in the record of how serious the mental and physical health problems of the applicant's wife are and what treatment is necessary for them. Thus, the AAO cannot determine the full impact of these conditions if the applicant's wife were to join her husband in Trinidad. The applicant provided no information about health care in Trinidad or the social, economic, and political conditions there. The applicant's parents are natives of Trinidad and are familiar with its culture and language. It is noted that the applicant's wife is a U.S. citizen, his mother is a naturalized citizen, and his father is a permanent resident. They are therefore not required to reside outside the United States as a result of the applicant's inadmissibility. They may remain in the United States if they choose.

All prospective hardships to the applicant's wife and parents have been considered separately and in aggregate. Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife and parents should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. While they will lose the companionship of the applicant should

they remain in the United States, the record shows that they will continue to have the support of numerous close family members and sufficient economic means to meet their needs. 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.

The AAO will now consider the section 212(h) waiver of inadmissibility.

The AAO notes that the factors deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative in the section 212(i) waiver of inadmissibility are the same factors that apply to a section 212(h) waiver of inadmissibility. Since the AAO found that the applicant fails to establish extreme hardship under the section 212(i) waiver, it consequently finds that the applicant fails to establish extreme hardship under the section the 212(h) waiver for inadmissibility to the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or parents 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. In this case, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.