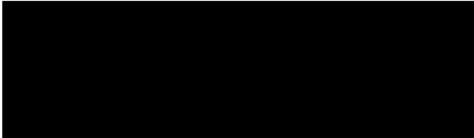


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Handwritten initials "H2"

FILE:



Office: LOS ANGELES

Date:

FEB 28 2007

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.

Handwritten signature of 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 citizen of France. She 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. 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 with her U.S. citizen husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 15, 2004.

On appeal, the applicant's husband, [REDACTED] describes the importance of their marriage and the hardships he would suffer if separated from his wife, including depression and a feeling of hopelessness. He states that the idea of being apart from his wife is destroying him; that he will not be able or willing to live without her. *Affidavit of* [REDACTED] October 4, 2004. He also states that he suffers from "debilitating lower back and knee joint pains resulting from a fall five years ago, and that the pain prevented him from working for two weeks, during which time he depended on his wife to take care of him and his business. *Id.* He adds that after several consultations, he learned that his back and knee problems will likely persist and get worse, and that without his wife he could lose his small consulting business as well as his mobility. *Id.* He also describes the hardships he would suffer if he moved to France, including that he would lose his career, the country he loves, and his closeness to his elderly parents (aged 65 and 68); that he does not speak French and has no familial bonds or professional contacts in France and a career would be impossible for him there. *Id.* In support of his assertions, [REDACTED] submits medical records and bills indicating that he had emergency treatment at Saint Vincents Hospital in New York on October 31, 1999, and his statement to his insurance company describing his injury as "fractured left leg & ankle with severe knee and back pain" on that date. The record also contains documents submitted in support of the applicant's Form I-601, including a Psychological Evaluation Report for [REDACTED] concluding, *inter alia*, that "it is predictable that separation [from his wife] would worsen his symptoms which diagnostically are currently both Depression and Anxiety"; and two letters from friends of the couple noting how much the applicant and her husband care for each other. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides:

(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 on January 13, 1996 the applicant attempted to enter the United States by claiming to be a U.S. citizen. Thus, the applicant sought to procure admission to the United States by fraud or willfully misrepresenting a material fact. Accordingly, she was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). [REDACTED] does not contest her inadmissibility on appeal.¹

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 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). In *Matter of Cervantes-Gonzalez*, 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 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).

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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to

¹ The AAO notes that individuals making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The record indicates that the applicant was born in Morocco in 1960 and is a citizen of France. Her husband, [REDACTED], was born in Oklahoma in 1961. He states that they met in 1998; they were married in Los Angeles in 2001. According to biographic information in the record (Form G-325A) the applicant moved to the United States from Paris, France in 1996; she lists her occupation as “designer.” The applicant’s husband owns and operates Sintilation, Inc., a company he describes as a consulting business that develops entertainment technology for major entertainment companies. *See Affidavit by [REDACTED]*, June 17, 2002. His income tax records for 2000 show an income of \$104,428; there are no financial records to show whether the applicant is or has been employed in the United States. [REDACTED] states that his wife helps him with his business and that he suffers from back pain and needs her assistance. He also states that he would not be able to work in France and would not want to leave his “elderly” parents.

It is clear from [REDACTED]’s statements and the Psychologist’s Report, *supra*, that he loves his wife and is suffering from anxiety and depression over possible separation. The AAO recognizes that the emotional and psychological hardship of separation would be difficult for him if he chose to remain in the United States separated from his wife. Separation from a spouse is a significant factor to be considered for purposes of an extreme hardship determination and it is not discounted. The record does not, however, indicate that his psychological state is more severe than that of other spouses in the same situation. Moreover, although Mr. [REDACTED] refers to back pain and necessary personal and financial assistance from his wife that he would lose if they were separated, there are no medical or financial reports in the record to support these claims. The statements of the applicant’s husband, without more, do not satisfy the applicant’s burden of proof. 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)).

In addition, there is no evidence in the record that indicates that [REDACTED] would suffer extreme hardship if he chose to join his wife in France, thus alleviating the hardships of separation. Although the record reflects that [REDACTED]’s business is in the United States, and that he may face a reduction in income by relocating to France and facing the challenge of working in a language that is not his own, there is no indication in the record that his skills in the entertainment industry could not be transferred to France or that he and his wife together would not be able to support themselves in France. Again, [REDACTED]’s statements to the contrary, without supporting documentary evidence, are not sufficient for purposes of meeting the applicant’s burden of proof. *Matter of Soffici, supra*. Absent information on country conditions and the affect of such conditions on the personal economic situation of [REDACTED], the AAO cannot conclude that any hardship experienced as a result of relocation to France would be extreme. Separation from his parents and his community will also represent difficulties for [REDACTED], but the evidence does not indicate that the hardships associated with this separation would be beyond that which is normally experienced in most cases of removal or inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if his wife is not granted a waiver of inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. 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. 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 who are deported. *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The record indicates that [REDACTED] would endure emotional hardship as a result of separation from his wife, but this hardship is not extreme and he has the option of avoiding the hardship by accompanying his wife to France.

Regarding the financial impact of the applicant's inadmissibility, there is no evidence that [REDACTED] would suffer financial hardship if he remained in the United States and maintained his consulting business, and no evidence in the record regarding his ability to use his skills and experience in France or the availability of employment in France for either [REDACTED]. 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. His situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility.

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

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.