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FILE:

Office: LOS ANGELES

Date: JUN 05 2007

IN RE:

PETITION: 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 PETITIONER:



**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 cursive script, 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 sustained.

The applicant, [REDACTED] was born in Ethiopia; her nationality is Eritrean. She 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 procuring admission to the United States by fraud or willful misrepresentation. She 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, [REDACTED] (Mr. [REDACTED]).

The district director concluded that the applicant did not provide evidence that her spouse would experience extreme hardship if she were deported from the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 4, 2005.

On appeal, the applicant, through counsel, asserts that the factors indicating hardship to the applicant's spouse, "taken as a whole, reach the level of extreme hardship," and that her spouse "currently suffers and will continue to suffer extreme hardship if his wife is removed to Ethiopia." *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated February 2, 2005; *Appellate Brief*, dated January 26, 2005. In support of these assertions, the applicant submitted the following documents:

- (1) A letter, originally submitted in support of the applicant's request for a waiver, dated November 3, 2003, from Dr. [REDACTED] Ph.D., a Licensed Psychologist. The letter concludes, based on two separate consultations, that Mr. [REDACTED] "has developed a Major Depression in response to his spouse's unresolved immigration status" and that "it is likely that Mr. [REDACTED] would suffer a severe depressive episode, if his spouse were to be deported." Dr. [REDACTED] also states that, depending on his response to treatment, Mr. [REDACTED] prognosis is good if he engages in a course of psychotherapy to enhance his coping skills and seeks a Psychiatric Evaluation to determine suitability for treatment with anti-depressant medication, and is also contingent on his spouse's continued residency in the United States. Mr. [REDACTED] reported feelings of helplessness and failure, and daily repetitive worrying about his wife's possible deportation, and explained that "because of the political history of his and his spouse's countries of origin (Ethiopia and Eritrea), it would not be possible and/or prudent for [them] to seek repatriation in either country."
- (2) A letter from [REDACTED] Medical Group certifying that the applicant was pregnant as determined by a urine pregnancy test on September 14, 2004.
- (3) Mr. [REDACTED]'s Certificate of Naturalization issued on April 18, 2001
- (4) Mr. [REDACTED] Declaration, dated July 1, 2004. He notes that he has lived in the United States for the last fifteen years, he cannot picture his life without his wife, and he describes the emotional suffering he has experienced due to the thought of her returning to Ethiopia. He states that because of the political instability of Ethiopia and possible persecution of his wife if she returned, he is afraid that she will be immediately harmed and abused by the authorities. As a result of these fears he states he

suffers from depression and lack of sleep, appetite and energy; and he is constantly angry and feels helpless.

- (5) Affidavits, dated July 2004, from three friends of the couple confirming that the applicant and Mr. [REDACTED] are devoted to each other and that Mr. [REDACTED] is suffering “mental anxiety and sadness” over the possible deportation of his wife.
- (6) U.S. Department of State, *Ethiopia, Country Reports on Human Rights Practices – 2003*, released February 25, 2004. The report documents evidence of the longstanding and continuing conflict between Ethiopia and Eritrea, noting some improvements in the treatment of civilian Eritrean nationals and Ethiopians of Eritrean origin in Ethiopia and some on-going concerns, including, *inter alia*, their continued detention, on national security grounds; the repatriation of 177 Eritrean civilians to Eritrea and the resettlement to third countries of others; and an increase of Eritrean refugees to 5,980 during the year. The report also noted that although most civilian Eritrean nationals and Ethiopians of Eritrean origin in Ethiopia were registered with the Government and held identity cards and 6-month residence permits to gain access to hospitals and other public services, there were anecdotal reports that indigent Eritreans were denied the right to seek free medical services by government officials at the kebele (local government) level; and that, “[a]s a result of the conflict with Eritrea, thousands of persons were displaced internally . . . approximately 76,500 IDPs [internally displaced persons] remained in the country along the border with Eritrea . . . [and] [o]f the approximately 350,000 IDPs resulting from the border war, approximately 225,000 IDPs have been resettled [to other countries].”
- (7) Official documents showing that the applicant’s father, mother and four siblings were recognized as refugees by the United States when they were in Kenya in 2000 and that another sister applied for asylum in the United States in 2001; and a sworn declaration, dated January 29, 2005, by the applicant’s father stating that he was born in Eritrea, currently resides in Los Angeles, and has no immediate relatives in Ethiopia.

The record also includes tax and employment records indicating that Mr. [REDACTED] earned approximately \$26,000 in 2001 and that the applicant was a student; and Biographic Information (Form G-325A) for the applicant indicating that she resided in the Netherlands for approximately five years before coming to the United States in 2000. The entire record was reviewed and considered in rendering a decision on this appeal.

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:

- (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.

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that the applicant admitted using a false document to enter the United States from the Netherlands in 2000. For this prior misrepresentation, the District Director accordingly determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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 or to her children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. In this case, although both of her parents reside in the United States, the applicant has indicated that her husband is her sole 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 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 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he accompanies the applicant or in the event that he remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. In this case, the record shows that Mr. [REDACTED] was born in Eritrea, is of Ethiopian origin, and was granted asylum in the United States. It would not be reasonable to expect him, as someone who has been recognized as an asylee, to relocate to Ethiopia, given the continuing difficulties there for Eritreans and the fact that he has faced persecution in the past and/or has a well-founded fear of persecution in the future. Therefore this analysis will focus on whether Mr. [REDACTED] will suffer extreme hardship if he remains in the United States separated from his wife.

The record reflects that Mr. [REDACTED] was born in 1972; he became a U.S. citizen in 2001. The applicant was born in Ethiopia in 1978 and is of Eritrean origin. Her parents and four of her siblings were recognized as refugees while residing in Kenya and entered the United States as refugees in 2000. Another sibling arrived in the United States from Kenya in 2000 and applied for asylum. The applicant states that she resided in Holland from 1995 until she also came to the United States in 2000. She and Mr. [REDACTED] were married in Los Angeles in 2001. The record indicates that they have no family left in Eritrea or Ethiopia, and that the applicant’s family resides in Los Angeles. Tax records for 2001 show that Mr. [REDACTED] was the sole financial support of his family while his wife attended school; he stated in 2004 that she has become a Licensed Vocational Nurse and is employed at the LAC USC General Hospital. In September 2004, medical testing showed that the applicant was pregnant, but no additional information has been submitted for the record. Mr. [REDACTED] has expressed his fear and distress at the thought of his wife having to return to a place where she may suffer abuse at the hands of government authorities and where she has no family to help her; country reports indicate that his fears are not groundless; and a doctor’s report concludes that his symptoms indicate severe depression that may be treated with psychotherapy to enhance his coping skills and possibly anti-depressant medication, noting that this prognosis is contingent on a positive response to such treatment and also on his wife’s continued residency in the United States, predicting “a severe depressive episode” if she is deported. Mr. [REDACTED] claims that he would also suffer financially if he had to support both himself in the United States and his wife in Ethiopia, and that they would also have the added expense of traveling to a third country because he cannot go to Ethiopia.

The evidence supports a conclusion that Mr. [REDACTED] would suffer extreme hardship if he remained in the United States separated from his wife. His fears for his wife and his depression cannot be discounted and would likely increase if the applicant were forced to return to Ethiopia; having to resort to continued psychotherapy and anti-depressant medication may or may not alleviate these symptoms but can also represent an additional burden, financially and physically. If Mr. [REDACTED] wanted to avoid permanent separation from his wife, the added personal and financial difficulties of finding a country where they could meet outside of their countries

of residence is also a consideration. If the applicant were not granted a waiver of inadmissibility, Mr. [REDACTED] would suffer both the emotional and psychological hardship of separation from his wife and the continuing struggle to overcome the symptoms of depression and fear over his wife's safety. Based on the above evidence, the applicant has established that the cumulative general emotional effect that her inadmissibility would have on her husband, combined with the increased financial and personal burdens that he would face, render the hardship in this case 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, supports a conclusion that Mr. [REDACTED] **faces extreme hardship if his wife is refused admission. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.**

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country." *Matter of Mendez-Morales*, 21 I&N Dec. at 300 (citations omitted).

The adverse factors in the present case are the applicant's misrepresentation to seek entry into the United States in 2000, for which the applicant seeks a waiver. The favorable factors are her extensive family ties to the United States; extreme hardship to her U.S. citizen husband if she were to be denied a waiver of inadmissibility; her lack of any criminal record or offense; and, as indicated by affidavits from the couple's friends, her loving and supportive relationship with her husband.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.