

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



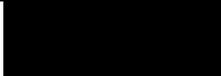
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H2

FILE:



Office: CLEVELAND, OHIO

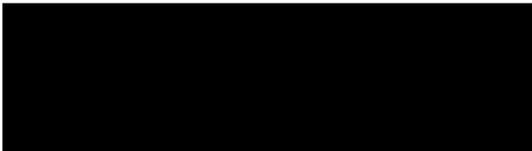
Date: **MAR 13 2007**

IN RE:



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 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, Cleveland, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 spouse and their U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon the applicant's U.S. citizen spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B*. Counsel has requested oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, the necessity for oral argument has not been shown. Consequently, the request for oral argument is denied.

In support of the assertions made on appeal, counsel submits a brief. The record also includes, but is not limited to, a country condition report; a statement from the applicant's spouse; and tax statements for the applicant and his spouse. 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that the applicant admitted in his adjustment of status interview to using his brother's passport to gain admission into the United States on March 1, 2001. *Form I-485*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's child or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed.¹ If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Jordan or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Jordan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were her parents. *Biographic Information (Form G-325A) for the applicant's spouse*. The applicant's spouse has no family in Jordan and is unaware of any relatives living outside of the United States. *Attorney's brief*. The mother of the applicant's spouse lives in Columbus, Ohio (*Form G-325A*), and the applicant's spouse is very close with her sister. *Attorney's brief*. The applicant's spouse does not speak Arabic. *Id.* While the record does not address whether the applicant's spouse would be able to financially contribute to her family if she lived in Jordan, the AAO acknowledges the applicant's spouse's inability to speak the native language. The applicant's spouse knows very little of Jordanian customs and culture, and she appears to be of Western

¹ The AAO notes that while counsel stated in his brief that the applicant's parents are lawful permanent residents, there is nothing in the record to confirm this assertion. The Form I-601 lists the applicant's parents as having applied to adjust their status to lawful permanent residence, but as noted, there is no supporting evidentiary documentation showing their adjustment. Furthermore, neither counsel nor the District Director addressed whether extreme hardship would be imposed upon the applicant's mother or father. As the record does not document that the applicant's parents are qualifying relatives, nor does it address the issue of extreme hardship as it relates to the applicant's parents, the AAO will only consider the applicant's U.S. citizen spouse as a qualifying relative for purposes of this appeal.

descent. *Id.* According to the United States Department of State, anti-American and anti-Western sentiment exists in Jordan and has been sparked on occasion by incidents in the region, particularly those related to Israeli/Palestinian issues and, to a lesser extent, Iraq. *U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet*, dated January 8, 2007. This may lead to random acts of violence against Westerners. *Id.* When looking at the aforementioned factors, particularly the applicant's spouse's inability to speak Arabic and her lack of cultural and familial ties to Jordan, the AAO finds that the applicant demonstrated extreme hardship to his spouse if she were to reside in Jordan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States, her mother lives in Columbus, Ohio (*Form G-325A*), and she is very close with her sister. *Attorney's brief.* Counsel asserts that the applicant's spouse is not working and if the applicant left the United States, it is uncertain how the applicant's spouse would be able to support the family, as the applicant is entirely responsible for the financial support of his family. *Attorney's brief.* While the AAO acknowledges counsel's assertions, there is nothing in the record to demonstrate that the applicant would be unable to contribute to the financial well-being of his family from a location outside of the United States. Counsel states that the applicant's spouse is unable to maintain full-time employment because she is taking care of their young daughter who is very demanding. *Id.* The record fails to address alternate forms of childcare including whether additional family members could assist with the care of the applicant's child, thus enabling the applicant's spouse to return to work. While the record includes country condition information regarding medical facilities and health information in Jordan, there is nothing in the record to demonstrate that the applicant or his spouse are suffering from any type of health ailment. The applicant's spouse stated that it would cause her great mental distress if the applicant returned to Jordan, as she has built a life with him and they have a child together. *Statement of the applicant's spouse*, dated December 17, 2005. 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 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. *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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.