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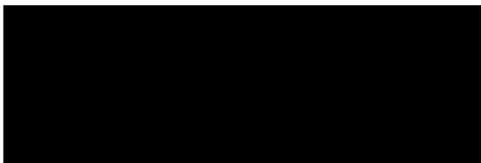
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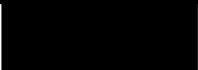
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FILE:



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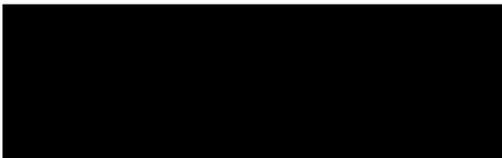
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles on September 28, 2004. On April 25, 2006, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen or reconsider the denial of the appeal. The motion will be granted. The previous decision of the district director shall be affirmed.

The applicant, [REDACTED] is a native and citizen of Armenia 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to [REDACTED] a naturalized citizen of the United States. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated September 28, 2004. The petitioner submitted an appeal, which the AAO dismissed. In denying the waiver application, the AAO found that the record failed to establish that the applicant's husband (her qualifying relative) would experience extreme hardship if the waiver application were denied.

On motion, counsel submits additional evidence: a U.S. Department of State report on Armenia; tax records; and a letter, dated May 20, 2006, from [REDACTED] a licensed marriage and family therapist. Counsel states that the finding of no extreme hardship in the instant case is an abuse of discretion. He asserts that *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) sets forth factors to consider in determining hardship, and *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) indicates the importance of family in assessing hardship. Counsel states that as shown by the report, Armenia has human rights issues, high unemployment, and corruption. He states that [REDACTED] immigrated to the United States as a refugee in 1991, and has no immigration status in independent Armenia. Counsel states that [REDACTED] has no family in Armenia and he would be separated from family members in the United States if he left the country. Counsel states that the tax records confirm that the applicant and her husband operate a business in the United States. He states that [REDACTED] report establishes that [REDACTED] will experience extreme hardship if the applicant leaves the United States.

The AAO grants counsel's motion.

The applicant seeks a waiver of inadmissibility. 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 to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is her husband. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. 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).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, if he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). As stated by counsel, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant’s husband would endure extreme hardship if he remains in the United States without his wife.

The May 20, 2006 letter from [REDACTED] indicates that [REDACTED] cannot become a mother to his children and husbands without wives have much difficulty raising their children. She states that the [REDACTED] family has been “suffering greatly with the pending possibility of the destruction of their family” and that [REDACTED] is close to having a mental breakdown.

Although the input of any mental health professional is respected and valuable, the submitted letter does not reflect that [REDACTED] interviewed the applicant’s spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the “severe depression, stress[,] and anxiety” that [REDACTED] concludes that the applicant’s spouse is experiencing. Moreover, the conclusions reached in [REDACTED] letter do not reflect the insight and elaboration commensurate with an established relationship with a therapist, thereby rendering [REDACTED] findings speculative and diminishing the letter’s value to a determination of extreme hardship.

Courts in the United States have stated that “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).

However, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. As held by the BIA, the birth of a U.S. citizen child is not *per se* extreme hardship. *Matter of*

Correa, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The letter from [REDACTED] reflects that he is very concerned about separation from his wife and the impact of her separation on their young children. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if he 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 as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

[REDACTED] letter, dated April 1, 2002, indicates that he would not be able to operate the family's business without his wife. The submitted tax returns reflect business income of \$35,443 in 2005 and \$30,014 in 2004 from a recycling center. The record, however, contains no information demonstrating that the applicant is needed to operate the recycling business. For example, there is no description of the company's organization and of the [REDACTED] duties. There is no information about the types and volume of the company's transactions. There is no evidence that the company has employees. 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)).

The record is insufficient to establish that [REDACTED] would endure extreme hardship if he joined his wife in Armenia.

The conditions in Armenia, the country where the applicant's husband would live if he joined her, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with

economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The AAO is not persuaded that extreme hardship has been established to [REDACTED] based on the U.S. State Department report on Armenia. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*.

Federal court decisions have shown that the difficulties the [REDACTED] may experience in obtaining employment in Armenia and the general economic conditions in that country are insufficient to establish extreme hardship. *See, e.g., Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

Counsel states that [REDACTED] immigrated to the United States as a refugee from Armenia, and that he has no immigration status and family ties in Armenia, and leaving the United States would separate him from family members. Although CIS records reflect that [REDACTED] was granted status as a refugee in 1991, significant changes have occurred in Armenia since then. No evidence has been presented to establish that [REDACTED] cannot return to Armenia because of his refugee status. The record does not show that [REDACTED] would not be able to live in Armenia based on his wife's Armenian citizenship. Other than two U.S. citizen daughters, the record fails to show that [REDACTED] has other family members living in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*.

The AAO notes that [REDACTED] would not be alone in Armenia as he would have his wife and her family members to provide an emotional base of support.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the

aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The previous decision of the district director shall be affirmed.