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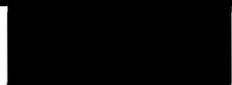
U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

Date: **APR 03 2008**

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:

SELF-REPRESENTED

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

The applicant is a native and citizen of Belize who 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the spouse of a naturalized citizen, sought a waiver of inadmissibility, which the District Director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated September 20, 2004.*

The AAO will first address the finding of inadmissibility.

The director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for seeking admission into the United States by fraud or willful misrepresentation for falsely claiming U.S. citizenship before an immigration inspector in order to gain admission into the United States.

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 chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter . . . is inadmissible.

....

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an

immigrant 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 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 AAO notes that aliens 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 Record of Sworn Statement that is signed by the applicant indicates that the false claim to U.S. citizenship was made to an immigration inspector in 1984; thus, it was prior to September 30, 1996. Accordingly, based on the provisions of the Act, the applicant is eligible to apply for a Form I-601 waiver.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and his or her child are 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 this case is the applicant's naturalized citizen husband. If extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"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). 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).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains income tax records, employment letters, marriage and birth certificates, medical records, gas bills, an insurance declaration, a monthly rental agreement, bank account statements, a food stamp/cash aid benefits identification card, and other documents.

On appeal, the applicant states that she has been married to her husband for the past nine years, and they have two U.S. citizen children who have known only this country as their home. She states that they are a close family, that they have embraced the American lifestyle, and that she has lived in the United States for 20 years. She states that her husband is employed in the airline industry and that he does not maintain strong ties outside of the United States. The applicant states that her husband has mental anguish about the likelihood of separation and the uncertainty of their family's future, and that his emotional state should be considered in evaluating the waiver request. She states that in the United States she contributes to the support of the household as a nurse assistant, and that in her village in Belize she would not find employment which is related or unrelated to her present occupation, and her salary would be much lower. She states that if she is unemployed, her husband would have to financially support her, and if he is unable to do so, he would be forced to join her to live in Belize. The applicant states that she does not have a home in Belize or relatives to assist them. The applicant conveys that her husband is 50 years old and has medical coverage in the United States through his employment, a benefit which she states he would not have in Belize.

The record reflects that the applicant's doctor indicated in a September 26, 2002 letter that the applicant has lower back pain and he states that the "MRI shows a disc protrusion that is abutting a spinal nerve. She is currently being evaluated for surgery by orthopedics spinal doctors."

The March 1, 2003 letter by the applicant's husband states that he has been married to the applicant for eight years and has been with her three years prior to their marriage. He states that the applicant has never been away from her children and that his daughter in high school needs her mother's attention while he is at work. He states that it would be very hard on him if his wife should have to depart for any given period of time from the United States.

The March 13, 2001 letter by DHL Worldwide Express conveys that the applicant's husband is scheduled to work 40 hours each week earning \$10.12 per hour as a senior clerk.

The income tax records for 2000, the most recent tax year submitted, indicate wages, salaries and tips of \$5,836 for the applicant's husband.

The April 3, 1998 letter by the Los Angeles County and USC Medical Center conveys that the applicant's husband was diagnosed with perforated sigmoid diverticulum and intraabdominal abscess with ilus and colostomy takedown and colostomy closure. The length of his disability is shown as August 7, 1996 through November 22, 1996 and March 24, 1997 through May 21, 1997.

The record conveys that the applicant's U.S. citizen children are 20 and 23 years old.

The record fails to establish that the applicant's husband would experience extreme hardship if he remained in the United States without her.

The submitted documentation is not sufficient to establish that the applicant's husband would not be able to meet monthly household expenses without the applicant's income. The record reflects that the applicant's husband earns \$10.12 per hour working 40 hours each week, but it contains no documentation of the applicant's income even though she indicates that she is employed as a nurse assistant. The record contains a monthly rental agreement, which indicates that the applicant and her husband pay \$550 per month in rent; an insurance declaration, which shows their vehicle insurance is \$1,324 annually; and two gas bills, which are under \$40. Without the applicant's earnings and a complete list of the family's household expenses, along with supporting documentation, the AAO cannot determine whether the applicant's income is needed to meet the family's household expenses. 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)).

With regard to family separation, 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, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), "it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship." 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 in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is 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. Thus, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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 record conveys that the applicant's husband is concerned about separation from his wife and her separation from their 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 the applicant's husband, if he remains in the United States without her, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required 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, Sullivan, supra.*

It is noted that the record does not indicate that, at present, any member of the applicant's family has a serious health condition.

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he were to join the applicant to live in Belize.

The conditions in the country where the applicant's husband would live if he joins his wife 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 applicant indicates that she and her husband would not find employment in Belize, and that if they did their salary would be low. Court decisions have shown that difficulties in securing employment are insufficient to establish extreme hardship. *See, e.g., Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico did not reach "extreme hardship"), and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

The applicant indicates that her husband would not have health insurance in Belize. The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985).

Although the record indicates that the applicant was to be evaluated for surgery, no documentation has been provided to establish that she underwent back surgery or would require it in the future.

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 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 the applicant 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, 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 appeal is dismissed.