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FILE:



Office: CLEVELAND (COLUMBUS OH) Date: **AUG 07 2008**

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), 8 U.S.C. section 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 black ink, 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 the Gambia who was found 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by his U.S. citizen spouse and 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 his spouse.

The record reflects that the applicant presented the passport and visa of a Canadian national to obtain admission to the United States on July 15, 2001. The applicant married his spouse, [REDACTED], on December 12, 2002 in the United States. The applicant's spouse filed the Form I-130 petition on the applicant's behalf on August 13, 2003. The petition was approved on March 31, 2004. The applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 13, 2003.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated August 18, 2005.

On appeal, counsel states that the district director erred in only considering financial hardship in denying the application. Counsel also asserts that the district director minimized the financial hardship that separation would have on the applicant's spouse, who is unable to work as a consequence of medical conditions and has three children, including an asthmatic son, and other relatives to support. Counsel contends that the applicant's spouse is wholly dependent on the applicant. Counsel observes that the applicant's spouse is a native of the United States, and would be forced to leave her family if she went to the Gambia. Counsel states that she and her children would suffer in the Gambia because of lack of suitable medical care there.

The record contains, among other documents, an affidavit from the applicant's spouse; a copy of the applicant's lease; a computer print-out showing the applicant's spouse's eligibility for welfare assistance; medical records; tax records from 2003, 2004 and 2005; copies of medical insurance cards; employment records; bank records; auto insurance documents, telephone bills and family photographs. The entire record was considered in rendering a decision on the appeal.

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.

The record reflects that the applicant presented the passport and visa of a Canadian national to obtain admission to the United States on July 15, 2001. The applicant has not disputed on appeal that he is inadmissible under section 212(a)(6)(C) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act 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 and his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's lawful permanent resident spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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).

U.S. courts have 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 or she accompanies the applicant or in the event that he or she 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 her affidavit, the applicant’s spouse states that she cannot work because of two surgeries for hernias after the birth of her third child. She indicates that she is wholly dependent on the applicant’s income to support her family. She asserts that she and her children, one of whom is asthmatic, depend on the applicant’s employment for health insurance. She also states that the applicant assists in the care of two of her nephews. She indicates that she was on welfare assistance before she met the applicant, and that she was barely able to care for her children. The applicant’s spouse states that if she relocated to the Gambia, a country she has never visited, she would be separated from her family in the United States. She asserts that her children would suffer from not having the same education and opportunities they have in the United States, and that neither she nor her husband would be able to obtain employment sufficient to support the family.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if she chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The applicant has asserted that she is unable to work as a consequence of recent hernia operations. However, as stated in the district director’s decision, the applicant has submitted no documentation to substantiate this claim. 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 applicant has submitted medical records, but none of these records indicate that the applicant has had hernia operations or is physically incapacitated to such an extent that she is unable to work. It is also noted that the applicant’s spouse’s asthmatic son, [REDACTED], is not a minor child, but is 21-year-old man, and is not listed as a dependent on the applicant’s 2004 tax return. Of the applicant’s spouse’s three children, only one is also the applicant’s child, and the applicant’s spouse apparently has cared for and supported her other two children in the past.

The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant’s spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common

results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 applicant has also failed to demonstrate that she would experience extreme hardship if she relocated to the Gambia. The AAO acknowledges that the applicant is a native of the United States and has no family in the Gambia. However, her assertions that the applicant will be unable to find employment in the Gambia, and that she and her children will suffer from the lack of education, healthcare and other opportunities there, are unsubstantiated in the record.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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(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 not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.