

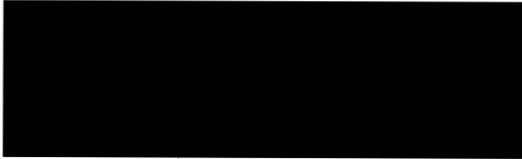
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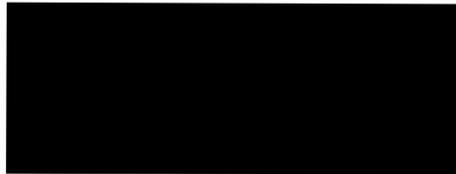


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2008**

IN RE: Applicant: [REDACTED]

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 Director, California Service Center, 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 Dominican Republic 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated January 25, 2006.

On appeal, counsel for the applicant contends that the applicant's wife and daughter will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated February 22, 2006. Counsel further states that the applicant claims he did not commit fraud or misrepresentation. *Id.* at 2.

The record contains a brief from counsel in support of the appeal; statements from the applicant's wife; copies of flight records showing that the applicant visited Virginia; photographs of the applicant with his daughter; a letter from the applicant's employer; a letter from the applicant's Pastor; documentation of the applicant's transfer of funds to his wife, and; a statement from the applicant in connection with his Form I-485 application to adjust his status to permanent resident. 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.

The record reflects that in approximately 1989 the applicant entered the United States using a fraudulent passport. Thus, the applicant entered the United States by fraud, and made a willful misrepresentation of a material fact (his identity) in order to procure an immigration benefit (admission to the United States.)

Accordingly, the applicant 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).

Counsel states that “[t]he applicant asserts that he did not by fraud, or willfully misrepresented [sic], a material fact . . . [seek] to procure a visa under this Act.” *Brief from Counsel* at 2. However, the applicant has not provided any evidence or explanation to show that he did not use a fraudulent passport to enter the United States. The applicant has not shown by a preponderance of the evidence that he was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act.

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 the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

On appeal, counsel for the applicant contends that the applicant’s wife and daughter will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel* at 1-2. Counsel asserts that, although the applicant and his wife are separated, they are close and occasionally take trips as a family. *Id.* at 1. Counsel states that the applicant supports his wife and daughter financially. *Id.* at 2.

The applicant’s wife states that she is unaware of how the applicant will help her with their daughter if he returns to the Dominican Republic. *Statement from Applicant’s Wife*, dated February 9, 2006. She provides that the applicant is a good father and spends time with his daughter. *Id.* at 1. She indicates that the applicant’s daughter will experience significant physical and emotional hardship if the applicant departs the United States. *Id.* In a separate statement, the applicant’s wife explained that she and the applicant are separated, and that the applicant pays child support. *Initial Statement from Applicant’s Wife*, dated May 10, 2004.

The applicant stated that he and his wife are separated, but that they stay in touch for the sake of their daughter. *Statement from the Applicant*, dated November 18, 2004. He indicated that, since he separated from his wife, he has continued to make monthly child support payments. *Id.* at 1.

Upon review, the applicant has not shown that his wife will experience extreme hardship if his waiver application is denied. The record shows that applicant and his wife are separated. In two statements from the applicant's wife, she did not express any emotional tie to the applicant. She merely discussed the applicant's payment of support for their daughter, and his interaction with her. She communicated that the applicant's daughter would suffer consequences as a result of the applicant's departure, but she did not describe any direct negative consequences she would endure beyond losing the applicant's financial support and assistance with their daughter. Thus, the record does not show that the applicant's wife would experience significant emotional consequences if he is compelled to depart the United States.

The applicant has not provided any documentation or explanation to show his wife's financial resources or income. Nor has the applicant shown he would be unable to make child support payments from the Dominican Republic. The AAO is unable to assess the impact the possible loss of the applicant's child support payments would have on his wife.

Counsel asserts that, although the applicant and his wife are separated, they are close and occasionally take trips as a family. Yet, the statements from the applicant's wife and the applicant do not support this. Counsel states that the applicant supports his wife and daughter financially. Yet, the applicant and his wife only make reference to child support payments, thus the record contains no evidence that the applicant supports his wife.

The applicant's wife suggests that the applicant's daughter will experience hardship if the applicant departs the United States. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not established that his wife will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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. Thus, the applicant has not shown that his wife's emotional hardship will rise to the level of extreme hardship.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.