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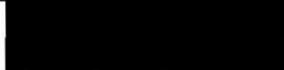


**U.S. Citizenship
and Immigration
Services**



H 2

FILE:



Office: LONDON, ENGLAND Date:

DEC 01 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) and under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. *The appeal will be dismissed.*

The applicant is a native and citizen of Ecuador and a citizen of Italy who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and 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 attempting to procure a visa to the United States by fraud or willful misrepresentation. The applicant's fiancé is a U.S. citizen and she seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and § 1182(i), in order to reside in the United States with her fiancé.

The officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility. *Decision of Officer-in-Charge, at 4, dated July 17, 2006.*

On appeal, the applicant's fiancé asserts that information stated in the denial is not correct. *Form I-290B Supplement, at 1, undated.*

The record includes, but is not limited to, the applicant's fiancé's Form I-290B supplement, statements from the applicant and the applicant's fiancé, documents related to the applicant's fiancé's employment, documents from Off Shore Legal Referrals and pictures of the applicant and her fiancé. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant submitted a fraudulent annulment certificate from her previous marriage. The applicant's fiancé states that he and the applicant were victims of an internet scam and they spent more than one thousand dollars on what they thought was a real annulment. *I-290B Supplement, at 3, undated.* The record includes documents from Off Shore Legal Referrals that advertises a divorce process which has the appearance of legitimacy. Therefore, the applicant's fiancé's claim that he and the applicant thought it was a real annulment is plausible. As such, the AAO finds that although the applicant submitted a fraudulent annulment certificate, her misrepresentation was not willfully made.

The record reflects that the applicant entered the United States as a visitor in December 1997 with an authorized period of stay until June 16, 1998. The applicant remained in the United States beyond her authorized period of stay and subsequently departed the United States in August 2002. She, therefore, accrued unlawful presence from June 16, 1998, the date her authorized period of stay expired, until August 2002, the time she departed the United States. The applicant returned to the United States under the visa waiver program on August 14, 2002 with an authorized period of stay until November 14, 2002. The applicant remained in the United States beyond her authorized period of stay and subsequently departed the United States on or around February 2, 2004. As such, the applicant again accrued unlawful presence from November 14, 2002, the date her authorized period of authorized stay expired, until February 2, 2004, the date she departed the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her 2004 departure.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé(e) is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

...

(a) Fiancé (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required.* The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's fiancé must be established whether he relocates to Ecuador or Italy or remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her fiancé in the event of relocation to Ecuador or Italy. The applicant's fiancé states that the New York Police Department (NYPD) documents detail the medals he received on September 11, 2001, he has been on the frontlines of fighting terrorism in the United States, he investigates and rescues people from terrorist incidents, and he has arrested numerous illegal aliens who have committed violent crimes. *I-290B Supplement*, at 2. The applicant's fiancé states that he has worked with NYPD for 14 years, his retirement is at 20 years, his entire family is in the United States, he is paying an extreme amount of child support for his three children and his children cannot leave the United States as he does not have custody of them. *Id.* at 4. The record reflects that the applicant's fiancé was recognized by the City of New York Police Department for his work on September 11, 2001. *Police Department, City of New York, Departmental Recognition*, at 5, dated August 12, 2003. The record reflects that the applicant's fiancé is a criminal investigator/hostage negotiator for the NYPD. *Applicant's Fiancé's Business Card*. The record reflects that the applicant's fiancé is affiliated with The Missing/Abducted Children Task Force of New York State, a not-for-profit corporation operating in New York. *NYS Department of State, Division of Corporations Records*, undated.

The applicant's fiancé states that he has three children. *I-290B Supplement*, at 3. The applicant's fiancé states that he is fighting for custody of his two younger children in the New York City Family Court and that he is paying an extreme amount of child support for his three children. *I-290B Supplement*, at 3-4. However, the record does not include documentation to establish that the applicant's spouse is the father of the children in the pictures submitted, that he is seeking custody of his two younger children, that he is required to pay child support for the two younger children or the amount of child support. Nevertheless, considering the applicant's fiancé's employment obligations and his family ties in the United States, the AAO finds that he would experience extreme hardship in the event of relocation to Ecuador or Italy.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her fiancé remains in the United States. The applicant's fiancé states that he suffers from prostatitis, which causes or leads to cancer, and his doctor has stated that his prostatitis is caused by stress. *I-290B Supplement*, at 4. The AAO notes that there is no supporting evidence in the record of the applicant's medical problem, its severity or its relation to stress. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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's fiancé states that he is seeking a family nucleus with one of his sons and his daughter, and having a family nucleus increases his chances of gaining custody of his children. *I-290B Supplement*, at 3. The applicant's fiancé states that he will not obtain custody of his children without the applicant, he is incomplete without her, he finds it hard to do his daily activities and his children are heartbroken without her. *Applicant's Fiancé's Statement*, at 1. The record does not include documentation to establish that the applicant's spouse is the father of the children in the pictures submitted, that he is seeking custody of his two younger children, that the applicant's fiancé would be unable to obtain custody of his children without the applicant, that his children are experiencing emotional issues without her or that he is experiencing emotional hardship beyond the normal effects of separation. The applicant's fiancé states that he is paying an extreme amount of child support for his three children and the extra income from his fiancé would greatly help him. *I-290B Supplement*, at 4. The record reflects that the applicant's fiancé was ordered to pay basic child support of \$344.00 bi-weekly. *Judgment of Divorce*, at 2, dated October 30, 1998. This judgment is for the applicant's fiancé's first child, but there is no documentation to establish that he is required to pay child support for the two younger children or the amount of child support. The record does not include sufficient evidence of the applicant's fiancé's financial status to determine that he would experience financial hardship without the applicant's income. In addition, the record does not include evidence of any other forms of hardship.

The AAO finds that insufficient evidence has been provided to determine that the applicant's fiancé would experience extreme hardship if he remained in the United States without the applicant.

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 removed

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé caused by the applicant's inadmissibility to the United States. 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(a)(9)(B) 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.