

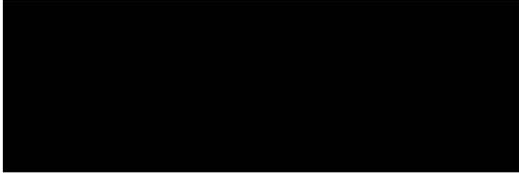


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H2



DEC 24 2008

FILE:



Office: LONDON, UNITED KINGDOM

Date: DEC 24 2008

IN RE:

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:

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).

for

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native of Eritrea and a citizen of Sweden who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to assist his cousin with fraudulent entry into the United States by providing his cousin with the passport of his sister. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse and son.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 7, 2006.

On appeal, the applicant's wife asserts that she is suffering extreme hardship by being separated from the applicant. *Form I-290B*, filed August 10, 2006.

The record includes, but is not limited to, declarations from the applicant and his wife, letters from Dr. Byoung K. Lee, and an approved relative immigrant visa petition. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 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 [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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen son would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that on June 7, 2000, the applicant attempted to assist his cousin with fraudulent entry into the United States by providing his cousin with the passport of his sister. On June 8, 2000, the applicant was expeditiously removed from the United States. On February 10, 2005, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On May 20, 2005, the applicant's Form I-130 was approved. On January 10, 2006, the applicant filed a Form I-601. On July 7, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's wife states she will suffer extreme hardship if she joins the applicant in Sweden. The applicant claims his wife "is overcome with sadness at being separated from [him]. She

constantly cries with no forewarning...[and] [s]he feels very emotionally isolated because she is not getting the benefit of a marriage partner.” *Applicant’s declaration*, dated January 9, 2006. Dr. [REDACTED] states the applicant’s wife “had severe stress related sleeping disturbances and needed to be referred to a psychiatrist on February 7, 2005. She also has mitral valve prolapse of her heart, which is more vulnerable to her stress as well.” *Letter from [REDACTED]* dated December 15, 2005. [REDACTED] further states that the applicant’s wife “had complaints various [sic] somatic symptoms with true mitral valve prolapse of the heart. It was [his] observation that all the somatic complaints were related the most by her anxiety and stress related problem.” *Letter from [REDACTED]*, dated July 12, 2006. The AAO notes that other than the two letters from Dr. [REDACTED] there are no professional psychological evaluations for the AAO to review to determine if the applicant’s wife is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. Additionally, the AAO notes that there is no evidence in the record establishing that the applicant’s wife could not receive treatment for her medical condition in Sweden, or that she has to remain in the United States to receive medical treatments. The applicant’s wife claims that [REDACTED] stated “her psychological well being has been greatly harmed by the separation from [the applicant].” *Declaration from [REDACTED]* dated July 24, 2006. The AAO notes that since [REDACTED] claims the applicant’s wife’s anxiety and stress are primarily caused by the separation from the applicant, if the applicant’s wife joins the applicant in Sweden then the anxiety and stress would presumably no longer be an issue. The applicant’s wife claims that when she lived in Sweden she had a difficult time learning the language, and could not obtain employment. *See letter from [REDACTED]*, dated December 23, 2005. The AAO notes that the applicant’s wife is an educated woman, who received her graduate degree in Health Management, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Sweden. *Id.* The applicant claims that his son will suffer extreme hardship if he moves to Sweden. *See applicant’s declaration, supra.* The AAO notes that it has not been established that the applicant’s son, who is 6 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Sweden. Additionally, the AAO notes that the applicant’s family resides in Sweden. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joins him in Sweden.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family, friends, and church, maintaining her employment and educational opportunities for her son. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s wife claims that she lived in Sweden from July 2001 to January 2003, and she

 faced problems and obstacles in every facet of [her] life. [She] attempted to learn the language by taking classes, but [she] could not grasp this extremely difficult language. The inability to speak the language made it impossible for [her] to work as a registered nurse, so [her] career prospects were none at this point. The social isolation [she] felt as a result of not being able to communicate was also unbearable.

Letter from [REDACTED] supra.

The AAO notes that the applicant's wife has been living without the applicant since returning to the United States in January 2003, and it has not been established that she has suffered extreme hardship without him. The record contains evidence that the applicant has been providing financial support to his wife from a location outside of the United States; therefore, it does not appear that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant. Additionally, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation if she 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.