

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: NOV 03 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)

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. Wienmann".

Robert P. Wienmann, 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 Trinidad 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 procuring admission to the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has two U.S. citizen children. He is seeking 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.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Director's Decision*, at 4, dated July 12, 2006.

On appeal, counsel asserts that the director erred as a matter of law and abused his discretion in denying the case. *Form I-290B*, received August 14, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and two psychological evaluations of the applicant's spouse. **The entire record was reviewed and considered in arriving at a decision on the appeal.**

The record reflects that on April 19, 1995 the applicant procured admission to the United States with a birth certificate and military identification card in another person's name. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.¹

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.

¹ The AAO notes that the applicant's use of the fraudulent alien registration stamp to obtain employment, a social security card and a driver's license, as cited by the director in the denial of the I-485, does not make him inadmissible under section 212(a)(6)(C) of the Act as they are not immigration benefits.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 (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 spouse must be established in the event that she resides in Trinidad and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Trinidad. The record reflects that the applicant's spouse was born in Jamaica and moved to the United States when she was 17 years of age. *Evaluation from* [REDACTED], at 1, dated March 21, 2005. The applicant's spouse states that her father is on disability as a result of back problems and diabetes, her mother suffers from high blood pressure and has only a ninth grade education, she and her siblings help their parents financially and emotionally, she would not be able to help her parents if she were in Trinidad, she is a full-time teacher and has been with the same employer for ten years, and she would be unable to teach in Trinidad without a baccalaureate degree. *Applicant's Spouse's Statement*, at 1-2, dated August 16, 2006.

Counsel states that the applicant's spouse would not be able to teach like she has for the past ten years in Connecticut and her children would be subject to substandard education and medical help in Trinidad. *Brief in Support of Appeal*, at 2, dated September 8, 2006. Counsel states that the applicant and his spouse have no family ties in Trinidad, there is deep-rooted discrimination against women, there would be little opportunity for the applicant's spouse and the hospitals are substandard. *Id.* at 3. The AAO notes that the record does not include supporting documentary evidence of substandard education and medical services in Trinidad, discrimination against women or the lack of opportunity for women in Trinidad, or any other conditions in Trinidad that would cause hardship to the applicant's spouse. The record also offers no documentary evidence to establish that the applicant's spouse's parents suffer from any medical problems or that she provides them with support. 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)).

As such, the AAO finds that insufficient evidence has been provided to establish that the applicant's spouse would suffer extreme hardship if she resided in Trinidad permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant has been married to his spouse since June 8, 1997, they have never been physically separated during their marriage, they are raising two U.S. citizen children together, and the applicant is very close to his children and active in their lives. *Brief in Support of Appeal*, at 1-2. Counsel states that single parenting is an extreme hardship, the applicant's children are accustomed to both parents participating in their lives and it is necessary for the applicant to safeguard them from violence. *Id.* at 2. Counsel states that the applicant's spouse depends on the applicant for financial, emotional and psychological support. *Id.* Counsel states that the applicant's spouse could not afford their home, she would have to sell the house, she does not have a driver's license and public transportation in Hartford is inadequate or inconvenient, she could no longer support her disabled parents, she would lose the health insurance she receives through the applicant and she could not afford daycare for her children as the applicant earns half of the family income. *Id.* at 2-4. The AAO notes that the applicant's spouse's statement includes many of the same claims expressed by counsel.

The applicant and his spouse were evaluated in 1998 by a psychologist who states that the applicant's spouse depends on the applicant for health insurance and transportation, their lives are totally interdependent, and the applicant's spouse would face extreme and unusual hardship if the applicant were deported. *Evaluation from Ph.D.*, at 2, dated January 23, 1998. The applicant's spouse was evaluated by another psychologist in 2005 who states that the removal of the applicant would be destabilizing to the family and create extreme hardship for the applicant's spouse and children, the applicant is an actively involved parenting partner, he shares childcare responsibilities with his spouse and participates in activities with the children, he contributes to the family's income, the applicant's spouse would likely lose her home, the applicant's spouse's responsibilities and anxieties will markedly increase, and the children would face hardship and would be at increased risk for numerous psychological and social problems. *Evaluation from Ph.D.*, at 3. The AAO notes that neither of the psychologists offers a psychological diagnosis of the applicant's spouse as a result of the applicant's removal, rather they offer analysis of what constitutes extreme hardship in their opinions. The evaluations are also based on single interviews with the applicant's spouse, which renders both of limited value in determining extreme hardship. Having reviewed the record, the AAO finds that insufficient evidence has been provided to establish that the applicant's spouse would suffer extreme hardship if she were permanently separated from 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 deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that a review of the record fails to establish the existence of extreme hardship to the applicant's spouse 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(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.