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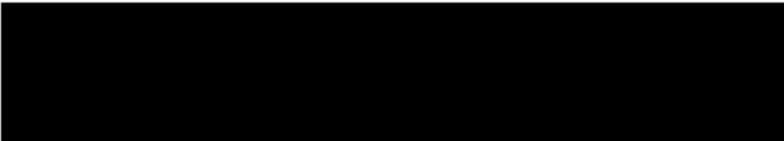


FILE: [REDACTED] Office: CHICAGO, IL Date: NOV 04 2008

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 PETITIONER:



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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a 32-year-old native and citizen of Serbia. He was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. He presently seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may adjust his status to lawful permanent resident and remain in the United States.

The district director found the applicant to be inadmissible based on his fraudulent attempt to enter the United States using someone else's passport. He further found that the applicant was ineligible for a waiver finding that his U.S. citizen spouse would not face extreme hardship.

On appeal, the applicant submits a statement from his wife stating that she would experience extreme hardship should the waiver be denied. The applicant's wife further states that the couple has twin infants, and explains her medical condition and the family's financial circumstances.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

The district director found the applicant inadmissible based upon his use of someone else's passport in order to gain admission to the United States. The applicant does not dispute this finding. Therefore, the AAO finds that the applicant is inadmissible as charged. The question remains whether the applicant qualifies for a waiver.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's U.S. citizen spouse. Hardship to the applicant's children, or to the applicant himself, is not a relevant consideration.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

The applicant’s spouse, _____ is a 39-year-old native-born U.S. citizen. She and the applicant have been married since 2003. The couple’s twin sons were born in 2007. The applicant’s spouse explains, in great detail, the difficulties the couple experienced trying to conceive, throughout her pregnancy, and post-partum. See Applicant’s spouse’s statement, dated May 22, 2008. The applicant’s spouse states that she does not wish to relocate to Serbia because of the dangerous political climate and economic circumstances. *Id.* She is also concerned about her sons’ well-being should they relocate. Specifically, the applicant’s spouse cites anti-American sentiment among Serbs, lack of employment and educational opportunities, and inadequate medical care. *Id.* The applicant’s spouse also mentions her family, community and property ties in the United States. *Id.* The applicant’s spouse also explains that her \$7000 income is insufficient to support herself and her children. See Applicant’s spouse’s letter, dated September 21, 2005 and accompanying evidence. She further explains that the applicant is responsible for the family’s financial support. *Id.* In a statement submitted in May 2005, the applicant’s spouse provided details of her dysfunctional and abusive family relationships throughout her childhood. Documents in the record indicate that the applicant suffers from Post-Traumatic Stress Disorder, relating to his experience during the war in Serbia.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, establish that the applicant’s spouse would face extreme hardship if the applicant is denied the waiver. The AAO notes that the record contains ample, updated evidence of the applicant’s spouse’s emotional and financial hardship claims. The AAO further notes the detailed statements submitted by the applicant and his spouse. The AAO therefore finds that denial of the waiver would result in more than the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

The AAO has also carefully considered the emotional impact of separation resulting from the applicant’s inadmissibility. The AAO finds that the applicant’s spouse would face extreme emotional hardship should

the applicant be removed to Serbia. In this case, the record shows that the hardship faced by the applicant's spouse due to separation from the applicant rises to the level of extreme.

The AAO further notes the applicant's spouse's reluctance to relocate to Serbia. Although the statute does not require the applicant's spouse to relocate, the AAO finds that should the family decide to relocate, the applicant's spouse and children would face extreme hardship. The hardship claimed in this regard goes beyond claims of a "lower standard of living and the difficulties of readjustment to [another] culture and environment." *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986).

The AAO therefore finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.