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U.S. Citizenship
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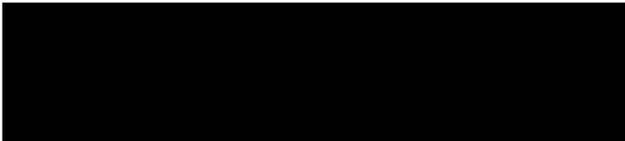
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IN RE:



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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, 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 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 having entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 19, 2005.

On appeal, the applicant states that he and his wife have a new baby who was born prematurely and, as a result, requires a prescription formula, prescription medication, and “a shot once a month to prevent RSV.” *Notice of Appeal to the Board of Immigration Appeals (Attached Statement)*, dated October 12, 2005). He also contends that he does not want to miss watching his other children grow up, and that one of his sons suffers from bipolar and psychotic disorders. *Id.*

The record contains a copy of the marriage certificate of the applicant and his spouse, [REDACTED] indicating that they were married on July 7, 2003; two affidavits from [REDACTED] copies of financial documents for the couple; and a treatment plan for the applicant’s son from a therapist. The record also shows that the applicant was convicted of retail theft in May 2003, and has nine other children from previous relationships, six of whom were living with him and his wife. 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 the applicant made a willful misrepresentation of a material fact by using an alias (██████████) in order to obtain entry into the United States. Although the applicant claims in his appeal that he did not know he was using another person's passport to enter the country, the record shows that while represented by counsel, he conceded to using an alias in order to enter the United States. See *Application for Waiver of Ground of Excludability (Form I-601)*, dated February 25, 2005. In addition, ██████████ listed "██████████" as the name that appeared on his Arrival/Departure Record (Form I-94). See, e.g., *Application to Register Permanent Resident or Adjust Status (Form I-485)*, dated October 9, 2003; *Biographic Information (Form G-325A)*, dated November 10, 1999. Therefore, the evidence shows that the applicant is inadmissible under Section 212(a)(6)(C)(i).

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. See Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Hardship the alien himself experiences upon deportation, or hardship upon the alien's children, is not a permissible consideration under the statute. *Id.* Therefore, 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.

██████████ contends she would suffer extreme hardship if the applicant's waiver application is denied because her husband is "the sole bread winner." See *Affidavit of* ██████████ undated. Mrs. ██████████ affidavit stated that she became unemployed in July 2004 and attended college full-time. *Id.* She further stated that if her husband returned to Trinidad, she would have major financial problems and would be unable to care for his six children with whom she had become very attached. *Id.*

Although there is some evidence of hardship to ██████████ if the applicant's waiver request is denied, the record does not warrant a finding of extreme hardship. The record shows that prior to their marriage on July 7, 2003, ██████████ worked full-time, earning a salary close to that of ██████████. See *Earnings Statement for* ██████████ *from Burriss Logistics Payroll; 2003 Tax Return*. It is unclear from the record why ██████████ became unemployed in July 2004 or when she will graduate from college. In addition, there is no indication that she cannot resume working. Furthermore, as the District Director observed, there is no evidence, such as adoption records, showing that ██████████ is financially responsible for any of the applicant's nine children from previous relationships. As the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to

qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

To the extent [REDACTED]'s appeal relies on his newborn baby's medical problems and his son's mental health issues, his children are not qualifying relatives. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). The record contains no birth certificates for any of [REDACTED] children. The AAO is, therefore, unable to confirm the identity, age, or immigration status of the applicant's children. The record also contains no specific information regarding the baby's medical condition, such as a letter in plain language from her physician, describing the exact nature and severity of the baby's condition. There are no medical records describing the diagnosis, treatment, or prognosis of the baby's condition, and no explanation of how the baby's condition might cause extreme hardship on [REDACTED] (the only qualifying relative) if the applicant returned to Trinidad. Without more detailed information, the AAO is not in a position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Similarly, there is insufficient evidence with respect to [REDACTED] son, [REDACTED], and his mental health issues. Although the treatment plan from [REDACTED] therapist stated that [REDACTED] demonstrates a strong connection to his family and responds very well to his father," *see Treatment Plan*, dated September 15, 2005, there is no indication how [REDACTED]'s problems might cause extreme hardship to [REDACTED]. Significantly, the record shows that [REDACTED] was born on July 21, 1990, and is now eighteen years old. *See Affidavit of [REDACTED]*, undated. There is no evidence [REDACTED] has any responsibility over [REDACTED], the applicant's adult son from another relationship.

[REDACTED]'s statements indicate that she and her husband have enjoyed a "bonded" relationship and that his children would suffer emotionally, mentally, and financially. *See Affidavit of [REDACTED]*, undated. She does not mention the possibility of moving to Trinidad to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. The AAO recognizes that [REDACTED] 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 deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

A review of the documentation in 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(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.