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U.S. Citizenship
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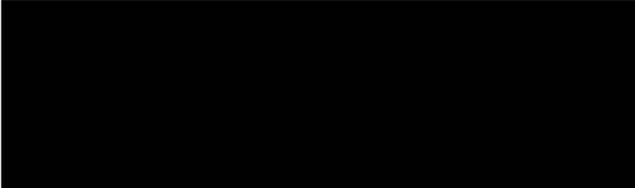


FILE:  Office: MEXICO CITY, MEXICO Date: NOV 26 2008
(SANTO DOMINGO SUB OFFICE)

IN RE: 

PETITION: Application for Waiver of Ground of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The record reflects that the applicant is a native and citizen of Trinidad and Tobago who, in November 2004, made an application for a "K-1" nonimmigrant visa as the fiancé of a U.S. citizen (Form I-129F, Petition for Alien Fiancé). In connection with the application for a K-1 nonimmigrant visa, the district director determined that the applicant was 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

The district director found that the applicant failed to establish that refusal of his admission would result in extreme hardship to his U.S. citizen fiancé and denied the waiver application accordingly. *Decision of the District Director*, dated August 1, 2006.

In support of the appeal, counsel for the applicant has provided an affidavit from the applicant's fiancée, dated August 25, 2006 and a letter regarding the applicant's fiancée's mental health situation, dated August 22, 2006. 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 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...

Section 212(a)(2) of the Act provides, in pertinent part:

- (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
 - (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Regarding the applicant's ground of inadmissibility under Section 212(a)(6)(C) of the Act of the Act, 8 U.S.C. § 1182(i), the record establishes that the applicant presented a false document, namely an employment confirmation letter, in an effort to obtain a nonimmigrant visa to enter the United States in 2001. The record also indicates that he failed to disclose that he had previously been arrested and convicted of a crime of moral turpitude, as further discussed below, when he applied for a nonimmigrant visa in 2001 and again, in 2002. The district director correctly found the applicant to be inadmissible to the United States based upon fraud or willful misrepresentation.

Regarding the applicant's ground of inadmissibility under section 212(a)(2) of the Act, the record establishes that the applicant was convicted of a crime involving moral turpitude in Trinidad and Tobago. He was convicted of Forgery, specifically, Uttering a Forged Document, in July 1995. The applicant was ordered to pay a fine and serve 9 months of hard labor. The district director correctly found the applicant to be inadmissible to the United States based upon the applicant's commission of this crime involving moral turpitude.

Thus, the first issue to be addressed is whether the applicant's grounds of inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Section 212(h) of the Act provides that a waiver under section 212(a)(2) is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully permanent resident spouse, parent or child. In this case, the only qualifying relative to be considered is the applicant’s fiancée.

The applicant’s fiancée, a U.S. citizen, asserts that she will suffer emotional hardship were the applicant unable to reside in the United States. As she states,

He [the applicant] has become a part of my life. When he is not with me I feel the separation physically and I long for him to be with me. I need him to be with me very much. I am forty four years old and still biologically capable of having children, but my ‘biological clock’ is running out of time to start a family. He has to be with me....

The separation from [the applicant] is taking its toll on my mental and physical health. I have been diagnosed as suffering from stress and depression. I am afraid that he does not come here to be by my side I will suffer permanent depression. I am sad and lonely, have trouble sleeping and digesting my food. My stomach has pain, I have palpitations and cry without warning.

I am now taking prescription medication to try to counter my depression. My existence is already miserable, having to take drugs to make it from one day to the next....

The hardship I am already suffering is extreme. It is the continuing permanent pain from the loss of love, companionship and family....

Affidavit of [REDACTED], dated August 25, 2006.

A referral to a psychiatrist has been provided to substantiate the applicant's fiancée's statements regarding her depression and anxiety. *See Letter from* [REDACTED] **dated August 22, 2006.**

To begin, although the input of any professional is respected and valuable, the AAO notes that the submitted referral letter is provided by a family practitioner, not a licensed mental health professional. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's fiancée. Moreover, the diagnosis of anxiety and depression made by [REDACTED], being based on a single visit for a physical examination, does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

In addition, the record indicates that the applicant's fiancée has been gainfully employed; the applicant's immigration situation clearly has not impeded the applicant's fiancée's ability to work and maintain the household. Finally, the applicant has failed to document that the applicant's fiancée, a native of Trinidad and Tobago, would be unable to visit the applicant on a regular basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Finally, while the AAO sympathizes with the applicant and her fiancée regarding their desire to have children, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the applicant’s inadmissibility. In this case, no reasons have been provided by counsel for why the applicant’s fiancée is unable to relocate to Trinidad and Tobago, her birth country, or any other country of their choosing, to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s fiancée will face extreme hardship if the applicant is refused admission. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a fiancée is refused admission. Although CIS is not insensitive to her situation, emotional hardship is a common result of separation and does not rise to the level of “extreme” as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.