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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER Date:

OCT 17 2009

IN RE:

[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 APPLICANT:

[REDACTED]

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. Wiemann".

Robert P. Wiemann, 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 the Dominican Republic who was found 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 sought to procure admission to the United States and an immigration benefit by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by her U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with him.

The record reflects that the applicant sought a nonimmigrant visa in April 1998 at the U. S. Consulate in Santo Domingo, Dominican Republic by representing herself to a consular officer as the member of a volleyball team that had been invited to play in a tournament in Michigan. When it was discovered that the invitation to the tournament and the team roster were fabricated, the applicant and others representing themselves as members of the team admitted that the information they had provided in requesting visas was false. The applicant was refused a visa. On her Application to Register Permanent Resident or Adjust Status (Form I-485), the applicant indicated that her last arrival in the United States occurred on June 1997 when she entered without inspection. The applicant answered “no” to the question as to whether she had, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit.

The applicant and her spouse were married on April 7, 2001 in the United States. The applicant’s spouse filed the Form I-130 petition on April 30, 2001. The petition was approved on May 1, 2006. The applicant filed the Form I-485 application on May 7, 2001. The applicant subsequently filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 27, 2006.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated May 19, 2006.

On Form I-290B, counsel asserts that the applicant has additional information and evidence showing that her spouse would suffer extreme hardship if the waiver application is not approved. Counsel subsequently submitted a statement by the applicant’s spouse and court and police records concerning the applicant’s spouse’s drug related convictions. In her statement, the applicant indicates that her husband’s depression has resulted in substance abuse that has rendered him dependent on her for financial and emotional support. She states that because of her spouse’s “disease,” he is unable to keep a permanent job and his work schedule is “at best sporadic.” She asserts that without her assistance, her spouse will spiral deeper into depression and substance abuse and be unable to obtain the help he needs.

The record also includes a statement by the applicant’s spouse submitted with the Form I-601 application, as well as tax and employment records submitted previously with the Form I-485 application. The entire record was considered in rendering a decision on the appeal.

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.

As stated above, the applicant requested a nonimmigrant visa in April 1998 at the U. S. Consulate in Santo Domingo, Dominican Republic by misrepresenting to a consular officer that she was the member of a volleyball team that had been invited to play in a tournament in Michigan. She and other alleged members of the team later admitted that this information was false. The applicant was refused a visa. On her Form I-485 application, the applicant indicated that her last arrival in the United States occurred without inspection on June 1997 and failed to disclose that she had been denied a visa in 1998 on the basis of misrepresentation. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

U.S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if he chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. It is noted that the applicant has submitted no evidence other than her vague assertions demonstrating that her spouse suffers from depression and substance abuse that has rendered him financially and emotionally dependent on her. Although the most recent joint tax returns in the record—for the years 2002 and 2003—do not show any income for the applicant’s spouse, the court and police records submitted on appeal indicate that the applicant’s spouse was under arrest in 2001 and convicted and sentenced on April 26, 2002 to 18 months incarceration (less 268 days credit). The evidence in the record shows that the applicant’s spouse was employed prior to his arrest, and the applicant has not submitted documentary evidence concerning his employment or financial status subsequent to 2003. 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)).

The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant’s spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common

results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also failed to demonstrate that her spouse would experience extreme hardship if he relocated to the Dominican Republic. The AAO acknowledges that the applicant is a native of the United States with family ties in the United States, but he has failed to submit sufficient evidence showing that his relocation to the Dominican Republic would result in extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 rests 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.