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FILE:

Office: BALTIMORE

Date:

**SEP 02 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), 8 U.S.C. section 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native of Iran and citizen of Belgium 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 by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by his 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 his spouse and children.

The record reflects that the applicant first attempted to enter the United States as a nonimmigrant visitor at Newark, New Jersey International Airport on July 7, 1999. The applicant presented his Belgium passport and a nonimmigrant U.S. visa (B-2) issued in Brussels. The applicant was referred to secondary inspection where he stated under oath that his purpose for coming to the United States was to see his spouse and child, to evaluate business opportunities in the United States, and then to return to Belgium to wait for his spouse to petition for his permanent residency. The applicant stated that he intended to become a permanent resident in the United States. The applicant admitted that he had no return ticket to Belgium. He stated that he was unsure of the duration of his visit and intended to buy a return ticket in the United States. It was observed that the applicant had in his possession of bill of lading indicating that he had shipped a container containing 32 cartons of household goods. The applicant testified that these were items his spouse would need when she rented a house, where he also hoped to reside. The applicant was found inadmissible under section 212(a)(7)(A)(i)(I) of the Act as an immigrant not in possession of a valid immigrant visa or other valid entry document and was denied entry into the United States accordingly.

The applicant attempted to enter the United States again as a nonimmigrant visitor at El Paso, Texas on August 22, 1999. Service records indicate that the applicant claimed to be a citizen of Mexico and applied for admission under the Visa Waiver Pilot Program (VWPP). Service records indicate that the applicant provided conflicting statements regarding his financial holdings and solvency in Belgium as well as his intention to briefly visit the United States. It was determined that the applicant had failed to establish eligibility for admission under the Visa Waiver Pilot Program (VWPP). He was denied entry to the United States and referred to the U.S. Consulate in Ciudad Juarez, Mexico to apply for a visa.

The applicant was subsequently admitted on August 24, 1999 at El Paso, Texas as a visitor under the VWPP. Although there is nothing in the record indicating the date of the applicant's departure, the record reflects that the applicant applied for and was denied an extension of stay and departed the United States prior to March 7, 2000.

The applicant attempted to enter the United States again as a visitor under the VWPP at Dulles International Airport (Washington D.C.) on March 7, 2000. When asked under oath why he had answered no to the question on Form I-94W concerning whether he had ever been refused entry to the United States, the applicant stated that he hadn't read the back of the form but had just done what everybody else did. He testified that he remained in the United States for only three months after being admitted on August 24, 1999. The applicant initially informed the inspecting officer(s) that his wife was in Belgium. He later told them that

his wife resided in Baltimore. He testified that he lied concerning his wife's residence and whereabouts because he thought he would be denied admission if he told the truth. The applicant was refused admission on the basis of his ineligibility under the VWPP and sections 212(a)(6)(C)(i) (material misrepresentation) and 212(a)(7)(A)(i)(i) (immigrant not in possession of immigrant visa) of the Act.

The applicant has indicated that he subsequently entered the United States without inspection at or near El Paso, Texas on March 28, 2000.

The applicant married his spouse [REDACTED], a native of Iran and naturalized U.S. citizen, on December 18, 1998 in Belgium. The applicant's spouse filed the Form I-130 petition on August 8, 2006. The petition was approved on March 28, 2007. The applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on August 8, 2006. The applicant subsequently filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The district director denied the applicant's waiver application on the ground that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of District Director*, dated December 4, 2007. The applicant has appealed this decision to the AAO.

On February 4, 2008, the applicant was issued a Notice to Appear (Form I-862) in removal proceedings on February 20, 2008. The record reflects that the applicant is in removal proceedings as of the date of this decision.

On appeal, counsel contends that applicant's spouse and her two sons would suffer extreme hardship if they returned to Belgium with the applicant because she is afraid her ex-husband will find her there and try to kidnap her oldest son as he did before. *Brief in Support of Appeal*, dated February 1, 2008, at 2. Counsel asserts that the applicant's spouse suffers from "chronic anxiety and depression" as a consequence of her husband's immigration problems and the possible break-up of her family. *Id.* at 3-4. Counsel states that the applicant's spouse's entire family are U.S. citizens, that she has no family in Belgium and that she does not speak any of the native languages of Belgium. *Id.* at 5. Counsel asserts that as a divorced and remarried woman, the applicant's spouse fears for her personal safety from imprisonment, abuse, torture and possible stoning to death if she is returned to Iran. *Id.* at 3.

The record contains, among other documents, psychological evaluations by [REDACTED], dated December 26, 2007 and May 17, 2007; affidavits from the applicant and the applicant's spouse dated May 25, 2007; the copy of a petition and order changing the surname of the applicant's stepson; a translation of the divorce decree for the applicant's spouse's first marriage; translation of a medical notice dated December 31, 1993 signed by [REDACTED] in Bremen, Germany; translation of Order by District Court of Bremen, Germany dated August 21, 1995 denying child visitation rights of the applicant's spouse's ex-husband; translation of a police report for abduction of applicant's spouse's son in Bremen, Germany on December 28, 1993; tax and financial records; and a letter from [REDACTED], an Iranian attorney. 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.

The elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-49 (AG 1960). For a misrepresentation to be considered willful, there must be evidence that the applicant intended to present false information or fraudulent documentation to an authorized official of the U.S. government. *Matter of Y-G-*, 20 I&N Dec. 794, 796-96 (BIA 1994); *see also Matter of D-L & A-M*, 20 I&N Dec. 409 (BIA 1991).

Based on these standards, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for having willfully misrepresented the following material facts to authorized officials of the U.S. government:

1. On August 22, 1999, the applicant sought to procure admission into the United States by misrepresenting that he was a citizen of Mexico.
2. On March 7, 2000, the applicant sought to procure admission into the United States by misrepresenting that he had never been refused entry to the United States before and that his spouse was not residing in the United States.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) for having sought admission to the United States on July 7, 1999 by presenting a nonimmigrant visa with the intent to immigrate to the United States. In his sworn statement taken on that date, the applicant stated that he intended to seek permanent residency in the United States, but he also asserted that he had a business in Belgium and would return to Belgium and "wait" for approval of a relative petition to be filed by his spouse. The record reflects that the applicant had previously entered the United States under the VWPP on April 26, 1999 and departed prior to the expiration of his period of authorized stay. The record also shows that the applicant was subsequently admitted under the VWPP on August 24, 1999, and departed from the United States before again seeking lawful admission on March 7, 2000. The fact that an alien has expressed a desire to enter the United States as an immigrant does not itself preclude the issuance of a nonimmigrant visa to him nor preclude his being a bona fide non-immigrant. *See Matter of H-R*, 7 I&N Dec. 651, 654 (Regional Commissioner 1958); *see also Matter of Hosseinpour*, 15 I&N Dec. 191, 192 (BIA 1975). Although there was evidence suggesting that the applicant intended to immigrate to the United States on July 7, 1999,

evidence which the inspecting officers relied upon in denying the applicant admission under section 212(a)(7)(A)(i)(I) of the Act, the AAO determines that there is inadequate evidence showing that the applicant was an intending immigrant *and* that he intended to misrepresent this fact by seeking admission to the United States through presentation of a nonimmigrant visa.

The AAO also finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for having provided conflicting statements regarding his financial holdings and solvency in Belgium and his intention to briefly visit the United States on August 24, 1999. There is inadequate evidence in the record of the actual statements made by the applicant to support a determination that these statements constituted material misrepresentations willfully made to an authorized official of the U.S. government.

Nevertheless, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for the material misrepresentations noted above.

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 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-Moralez*, 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.

In her affidavit, the applicant’s spouse states that though she and her husband were financially well-off in Belgium, they had no other family in the country, and their Belgian neighbors manifested racist attitudes towards them. She indicates that she was also afraid to remain in Belgium because her ex-husband had attempted to “kidnap” their infant son and take him back to Iran, and she feared that he would try to do so again when she learned that he had acquired the address for the son’s school in Belgium. When she learned that her mother was ill in the United States and needed someone to care for her, the applicant’s spouse decided to immigrate. The applicant’s spouse states that she now suffers from severe headaches because of the possibility the applicant will be removed from the United States. She asserts that she and her two sons “cannot live” without the applicant and that he is a “wonderful husband, father and provider for our family.”

In his evaluations, [REDACTED] opines that the applicant’s spouse is suffering from “chronic anxiety and depression” as a “direct outcome of unresolved problems and conflict over possible separation and loss of the husband and father of the family.” He states that he expects the applicant’s spouse “to experience an extreme and unusual hardship with long-term negative consequences for both mother and children.”

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 she 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. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluations from [REDACTED] are based on two interviews between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for any mental health conditions. Moreover, the conclusions reached in the submitted evaluation, being based on a limited experience, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's spouse has not asserted that she would suffer financial hardship in the applicant's absence. Counsel states on appeal that the applicant's spouse is a hospital surgical technician, and her individual tax return from 2005 shows significant capital gains income. The applicant's spouse has family in the United States. The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse and others, and as demonstrated by the 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 his spouse would experience extreme hardship if she relocated to Belgium.<sup>1</sup> The applicant's spouse has indicated that she is afraid her ex-husband will attempt to kidnap her oldest son in Belgium, but there is insufficient evidence to show that such a fear is reasonable. The applicant has submitted what purport to be translations of German language documents, but has failed to submit originals or copies of the actual documents themselves, rendering the translations of little probative value. There is no evidence in the record showing that the applicant's spouse has had any contact with her ex-husband since 1993, as indicated in the petition to change the applicant's spouse's oldest son's name. The applicant's spouse has stated that she and her husband were financially well-off in Belgium, and she has not asserted that she would suffer financial hardship if she relocated there. Counsel has asserted that the applicant's spouse does not speak any of the native languages of Belgian, but neither the applicant nor the applicant's spouse has listed this as a hardship factor. The applicant and the applicant's spouse have indicated that they were treated like "foreigners" in Belgium, but they have not shown that this hardship was extreme. The AAO acknowledges the evidence that the applicant's spouse would be separated from other family members if she returns to Belgium, the country in which she married the applicant, but finds that this hardship under the circumstances is merely the common result of removability or inadmissibility and does not rise to the level of extreme hardship when combined with other hardship factors.

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

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<sup>1</sup> Although evidence has been submitted to demonstrate that the applicant's spouse would suffer extreme hardship if she returned to Iran, the record does not show that the applicant, now a citizen of Belgium, would be removed or voluntarily relocate to Iran. Consequently, the AAO will consider only whether the applicant's spouse would suffer extreme hardship if she moved to Belgium.

level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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 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 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.