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U.S. Citizenship
and Immigration
Services

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#12



FILE: [REDACTED] Office: BALTIMORE, MD Date: SEP 22 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 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 36-year-old native of Guyana and citizen of Canada who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a United States citizen. The couple has two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States and obtain lawful permanent resident status.

The district director found that the applicant was ineligible for a waiver of inadmissibility because he failed to establish that his U.S. citizen spouse would face extreme hardship should his application be denied.

On appeal, the applicant, through counsel, claims that he is not inadmissible. *See* Appeal Brief. Alternatively, he maintains that he qualifies for a waiver of inadmissibility because his removal would result in extreme hardship to his U.S. citizen spouse and children. *Id.* Specifically, the applicant cites to his spouse's "tenuous" mental health, and their concerns over her raising their children on her own. *Id.* He further notes the financial difficulties she would face without his income. *Id.* Finally, he indicates that it would be difficult to sponsor his family for immigration to Canada. *Id.*

Evidence in the record indicates that the applicant attempted to enter the United States by fraud in 2000. He stated at the time that he was seeking admission as a visitor, when in fact he had been residing and working in the United States, and was seeking to remain in the United States permanently. The applicant claims that his misrepresentation was not material. The AAO disagrees, and finds the applicant to be inadmissible as charged under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).¹

The question remains whether the applicant qualifies for a waiver.

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”

¹ 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.

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to the applicant's children also may not be considered, except as it results in hardship to the applicant's spouse.

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 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. 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, [REDACTED] was born in Guyana in 1971. She became a U.S. citizen upon her naturalization in 1998. She and the applicant met in 1993, and were married in 1996. The couple has a daughter born in 2002, and a son born in 2006. They have owned their home since 2000. The applicant's spouse states that she is emotionally very close to her parents, and that they reside nearby. *See* Applicant's Spouse's Statement, dated April 19, 2005. The applicant's spouse, in her 2005 and 2006 statements, indicates that she does not wish to raise her children as a single parent. She further states that she is concerned about the emotional impact on her children of the family's separation. She is also concerned about the employment and immigration prospects in Canada. The applicant's spouse has been employed by a brokerage firm in Baltimore since 1997, and holds the title Assistant Vice President-Operations. *See* Letter from [REDACTED] Administration, Lombard Securities, Inc.

[REDACTED] a psychiatrist, evaluated the applicant's family and opined that it would be in their "best interest" that the applicant remain in the United States "to provide continuing and on-going support and stability." *See* Opinion of [REDACTED]. According to the opinion of [REDACTED] a psychologist who evaluated the applicant's spouse in 2005, she "is likely to have problems with intense anxiety, agitation and somatic complaints." *See* Opinion of [REDACTED], at 5. The psychologist further stated that "escalation in her anxiety when combined with her vulnerability for depression would likely affect her cognitive and emotional functioning to the extent that she would be minimally competent as a mother in the absence of adequate support." *Id.* at 6. The psychologist concluded that the applicant's spouse's mental health condition was related to the stress caused by the possible separation from the

applicant, and that should they be separated from him or her parents she “would likely lapse into clinical depression.” *Id.* The AAO notes that a physician’s letter in the record states that the applicant’s spouse suffers from frequent nose bleeds, which may be exacerbated should she reside in Canada because of the colder climate.

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 would face extreme hardship if the applicant is denied the waiver. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO has carefully considered the impact of separation from family resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances”). In this case, although the record suggests that there is a possibility that the applicant’s spouse would suffer from depression should the family be separated, the record does not indicate how she would respond to psychological treatment, or whether her condition would be chronic, severe or unusual. The AAO notes that the applicant is not currently being treated for depression, or any other mental health condition. The AAO record therefore does not support a finding that the applicant’s spouse’s emotional hardship would be greater than the hardship experienced by other individuals in her circumstances.

The AAO notes that the record does not support a finding of extreme financial hardship should the waiver be denied. In this regard, the AAO notes that the record does not indicate that the applicant would be unable to find suitable employment in Canada, to continue to provide financial support for the family, or that the applicant’s spouse could not financially support her family. The AAO further notes that the applicant’s spouse’s parents reside nearby, and that there is no indication that they could not provide financial, and emotional, support. The AAO also notes that in evaluating a claim of hardship “[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is

legally in this country.” *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The AAO has also considered the potential hardship that the applicant’s spouse may face should she decide to relocate to Canada. In this regard, the AAO notes that the applicant’s spouse, as a U.S. citizen, is not required to relocate to Canada but may remain in the United States. The AAO further notes that the applicant has family in Canada. There is no evidence in the record to suggest that either the applicant or his spouse would be unable to find adequate employment in Canada. The AAO finds that any potential hardship that would result should the family relocate to Canada would be the common results of any relocation and therefore do not amount to “extreme hardship.” See *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986)(holding that the “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”).

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, 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.