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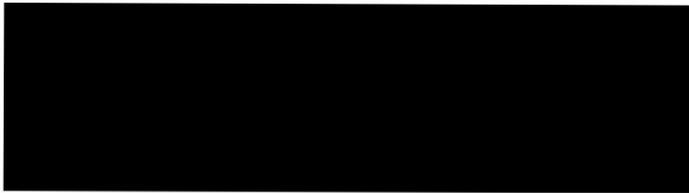
Date: SEP 30 2008

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)

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 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 Jordan who was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated May 19, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant and her spouse; a psychological evaluation; an agreement of lease; bank loan statements; a term note and purchase money security agreement; published country condition reports; an employment letter for the applicant and his spouse; a bank statements; and bills. 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 submitted a forged letter from the Jordanian Ministry of Defense indicating he was serving in the Jordanian military when he applied for a B-2 visitor visa at the United States embassy in Amman, Jordan on June 13, 1996. *Visa notes*, dated October 13, 1997. The applicant also stated that he had never been arrested or convicted for any offense or crime, even though he was convicted in Jordan of voyeurism and trespassing and served three months of a twelve month sentence in a civilian prison in

Jordan. *Id.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.¹

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience upon his removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. If 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 Board 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established whether she resides in Jordan or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Jordan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The parents of the applicant's spouse were born in the United States and continue to live in Youngstown, Ohio. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse has lived her entire life in the United States, specifically in Ohio and Pennsylvania. *Id.* The applicant's spouse does not read or write Arabic. *Statement from the applicant's spouse*, dated October 23, 2004. Due to the language barrier, it would be difficult for the applicant's spouse to get a job. *Id.* She would also have difficulties making friends and communicating with a doctor. *Id.* The applicant is currently taking an antidepressant because she suffers from depression. *Id.*; *See also psychological evaluation written by [REDACTED], ACSW, LCSW*, dated March 11, 2004 noting that the primary care physician of the applicant's spouse prescribed the

¹ The AAO notes that the applicant was convicted for voyeurism and trespassing, and his convictions may also render him inadmissible as having been convicted of a crime involving moral turpitude. However, as a 212(h) waiver standard is the same as a 212(i), and the 212(i) waiver standard is more restrictive in terms of who is considered to be a qualifying relative, the AAO does not need to address this potential section 212(a)(2)(A)(i)(I) ground of inadmissibility. The AAO also notes that at the time of his September 10, 1998 interview for adjustment of status, the applicant failed to inform the interviewing officer that he had been convicted and served time in jail.

antidepressant. The applicant's spouse states that if she has to leave her family, she knows her depression will just get worse. *Statement from the applicant's spouse*, dated October 23, 2004. The applicant is very close to her family in the United States and states that it would ruin her life if she has to leave them. *Id.* She also states that if she went to Jordan, she would never see her family due to the cost of travel. *Id.* The applicant's spouse also notes that she is suffering from depression and that she trusts her doctor in the United States and does not know how she would be able to find a doctor in Jordan to whom she can talk. *Id.* The applicant notes that as his wife does not speak any Arabic, it would be extremely difficult for her to live in Jordan. *Statement from the applicant*, dated October 23, 2004. When looking at the aforementioned factors, specifically the lack of cultural and familial ties in Jordan, the language barrier, the lack of employment opportunities due to the language barrier, and the potential exacerbation of her depressive state due to her lack of support and limited means of communication in Jordan, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Jordan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the parents of the applicant's spouse reside in the United States in Youngstown, Ohio, a location close to the applicant's spouse. *Form G-325A, Biographic Information sheets, for the applicant's spouse; Statement from the applicant's spouse*, dated October 23, 2004. The applicant's spouse states that she and the applicant own a convenience store together called the Fast Check Food Mart. *Statement from the applicant's spouse*, dated October 23, 2004; *See also term note and purchase money security agreement*, dated May 31, 2003; *Agreement of Lease*, dated May 5, 2003. She notes that without the applicant, there is no way that she would be able to keep the business and that this would result in extreme hardship for her. *Statement from the applicant's spouse*, dated October 23, 2004. However, the AAO observes that the record indicates that the applicant's spouse is employed full-time as a medical assistant. *See spouse's letter of employment*, dated January 14, 2004; *see also Form G-325A, Biographic Information sheet, for the applicant's spouse*, dated February 13, 2004. It does not demonstrate that the applicant's spouse would be legally liable should the Fast Check Food Mart business fail without the presence of the applicant. Furthermore, the record does not demonstrate that the applicant would be unable to contribute to his family's financial well-being from a location other than the United States.

According to a licensed clinical social worker, the applicant's spouse is suffering symptoms consistent with a Depressive Disorder, Social Phobia, a Dependent Personality Disorder, and a Specific Phobia, Situational Type. *Statement from [REDACTED] ACSW, LCSW*, dated March 11, 2004. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letters are based on two interviews with the applicant and his spouse occurring six days apart. Accordingly, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the evaluation's findings speculative and diminishing its value to a determination of extreme hardship. The AAO does acknowledge the information provided by the clinical social worker that the applicant's spouse is taking an antidepressant prescribed by her primary care physician. *Id.* The AAO notes, however, that the record fails to include a statement from the applicant's spouse's primary care physician, indicating the amount of time the applicant's spouse has received and will continue to receive this antidepressant, the severity of the applicant's spouse's depression, and how a separation from her spouse would impact her mental state and affect her course of treatment. As previously noted, the applicant's spouse

is very close to her family in the United States. *Statement from the applicant's spouse*, dated October 23, 2004. While the AAO does not diminish the difficulties of separating from one's spouse, it notes that the applicant's spouse has additional family members near her from whom she can receive support. The applicant's spouse states that removing the applicant would be like taking away her pursuit of happiness and her life. *Id.*

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS, supra*, held further that the 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.