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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE:

Office: PHILADELPHIA, PA

Date: APR 01 2009

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.

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania and was before the Administrative Appeals Office (AAO) on appeal. On June 11, 2003 the AAO dismissed the appeal. On July 11, 2003 counsel for the applicant filed a Motion to Reopen and Reconsider.¹ The Motion to Reopen and Reconsider will be granted. The previous decision will be affirmed.

The applicant is a native and citizen of Kenya who was found to be 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and 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 her spouse.

The AAO 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 AAO*, dated June 11, 2003.

In the Motion to Reopen and Reconsider, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Motion to Reopen and Reconsider*, dated July 11, 2003.

In support of the motion, the record includes, but is not limited to, published country conditions reports; a statement from the applicant's spouse; a medical statement regarding the applicant's spouse; statements from friends; an employment letter for the applicant's spouse; tax statements for the applicant and her spouse; and Forms W-2 for the applicant's spouse. 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

¹ On February 18, 2005 the applicant filed a second Form I-601, Application for Waiver of Ground of Excludability. This application is not before the AAO, as the District Director has not issued a decision on the Form I-601 waiver filed on February 18, 2005.

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 on March 18, 1998 the applicant procured admission into the United States by presenting a false passport and Form I-94W card. *See false Form I-94W, Departure Card; False passport; Form I-601, Application for Waiver of Grounds of Excludability.* Based on her presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an 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 if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's 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 spouse must be established whether he resides in Kenya or the United States, as he 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 Kenya, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate.* His immediate family lives in Delaware and New York. *Statement from the applicant's spouse*, dated December 2002. He is very close to his family and sees them frequently. *Id.* He has no family, friends or other connection to Kenya. *Id.* He is not familiar with Kenyan culture and believes that he would have an extremely difficult time adjusting to life there. *Id.* The record includes published country conditions reports documenting human rights violations in Kenya.

Kenya, Human Rights Developments, Human Rights Watch World Report 2002; Kenya, Country Reports on Human Rights Practices – 2001, U.S. Department of State, dated March 4, 2002. With his motion, the applicant submits a travel warning dated May 16, 2003 from the United States Department of State for U.S. citizens considering travel to Kenya. The AAO notes that the United States Department of State continues to warn U.S. citizens against travel to Kenya as recently as March 14, 2009. *Travel Warning, Kenya, United States Department of State, dated November 14, 2008 and current as of March 14, 2009.* When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to Kenya, the many family ties in the United States with whom he has frequent contact; and the travel warning for U.S. citizens regarding Kenya, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Kenya.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States and has many family members living in the same area. *Birth certificate; Statement from the applicant's spouse, dated December 2002.* The applicant's spouse states that when he first met the applicant, his life was falling apart. *Statement from the applicant's spouse, dated December 2002.* He states that he was drinking all the time, could not hold a job, and had no goals for the future. *Id.* Through the applicant's love, guidance, and support, the applicant's spouse asserts that he was able to seek counseling for his alcoholism and that he depends on her for support in his recovery. *Id.* He is now employed full-time and earns a decent income. *Id.* While the AAO notes that the record includes Forms W-2 and tax statements showing the applicant's spouse's earnings and a statement from his employer (*see Forms W-2 and tax statements for the applicant's spouse; and statement from [REDACTED] dated October 19, 2002*), there is no documentation from a licensed healthcare professional diagnosing the applicant's spouse as an alcoholic, showing that he received counseling for his condition, or that the applicant is playing a role in his recovery. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)).* While the record documents that a licensed healthcare professional saw the applicant on November 29, 2002 for anxiety/stress related symptoms due to the applicant's immigration status difficulties (*Statement from [REDACTED], dated December 12, 2002*), it fails to identify the symptoms for which the applicant's spouse was treated, the level of stress he was experiencing, the nature of the treatment provided and a prognosis for his conditions. The record provides no other documentary evidence related to the emotional hardship experienced by the applicant's spouse in relation to the potential removal of the applicant.²

The AAO acknowledges the emotions of the applicant's spouse. However, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove

² The AAO notes that the record contains medical documentation indicating that since filing the Motion to Reopen and Reconsider, the applicant's spouse has been diagnosed with diverticulitis for which surgery has been recommended and with prostatitis. The record does not document that either condition makes the applicant's spouse dependent on the applicant for care or financial support.

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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. 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 her spouse if he were to reside in the United States.

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(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 previous decision of the AAO shall be affirmed.

ORDER: The previous decision of the AAO is affirmed.