

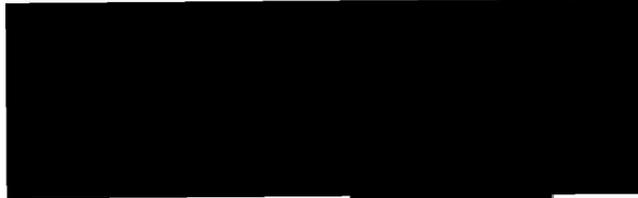
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:



Office: VERMONT SERVICE CENTER

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Rome, Italy and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. A Motion to Reconsider is now before the AAO. The motion will be granted. The previous decision shall be affirmed.

The applicant is a native of Guyana and a citizen of Canada who was found, on appeal, 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 being an alien who entered the United States by willfully misrepresenting a material fact. The applicant is the spouse of a naturalized U.S. citizen.¹ He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The AAO concluded that the applicant had not established that a qualifying relative would suffer extreme hardship as a result of his inadmissibility and dismissed the applicant's appeal accordingly. *Decision of the AAO*, dated March 24, 2006.

In the Motion to Reconsider, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant failed to establish extreme hardship to his qualifying relatives, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Motion to Reconsider*.

In support of the motion to reconsider, the record includes, but is not limited to, a brief; a psychological evaluation of the applicant's spouse; a statement from the nephew of the applicant; a statement from the applicant's spouse; Canadian earnings statements for the applicant; Canadian tax statements for the applicant; and copies of checks. 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

¹ Counsel asserts in his Motion to Reconsider that the applicant continues to contend that his inability to be with his lawful permanent resident mother in the United States will continue to cause her extreme hardship. The AAO notes, however, that, apart from this single assertion, counsel does not address how the applicant's lawful permanent resident mother would suffer extreme hardship if she resided in Canada or remained in the United States. Accordingly, the AAO has not considered this issue.

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.

As stated in the decision issued by the AAO on March 24, 2006, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having misrepresented himself as a nonimmigrant in order to enter the United States in order to seek employment. In the Motion to Reconsider, counsel does not allege that USCIS erred in its inadmissibility determination. As such, the applicant remains inadmissible under Section 212(a)(6)(C)(i) of the 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 or mother 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 she resides in Canada 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 Canada, the applicant needs to establish that his spouse will suffer extreme hardship. On motion, counsel asserts that if the applicant's spouse relocated to Canada, she would be leaving a stable job and income in the United States, and that starting over in Canada at nearly 50 years of age would be extremely difficult. *Motion to Reconsider*. He further contends that forcing the applicant to relocate to Canada and live on the applicant's income, which is half of what his spouse earns, would constitute extreme hardship. Counsel notes that the applicant's spouse routinely supplements the applicant's income. *Id.* He submits copies of two cancelled checks the applicant's spouse sent to the applicant in Canada, which

total \$800.00 for the month of January 2006. While the AAO acknowledges counsel's assertions, it notes that the record does not include published country conditions reports documenting the economy and employment opportunities in Canada. The record does not demonstrate that the applicant's spouse would be unable to secure employment in Canada or that any employment she could secure would not provide her with a living wage. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's spouse states that she firmly believes that she would never be able to locate comparable employment for comparable pay in Canada and that she bases these beliefs upon her numerous visits to Canada and her direct observations of the general economic climate in that region. *Statement from the applicant's spouse*, dated April 21, 2006. She also notes that it will be very difficult for her to compete for decent-paying employment with Canadian citizens, especially since she has no work history in Canada. *Id.* She believes that she would be limited to the same type of work as Guyanese natives who work in factories. *Id.* While the AAO acknowledges the beliefs of the applicant's spouse, her claims are not supported by the record. As previously noted, the record does not include published country conditions reports documenting employment opportunities in Canada, or that the applicant would be at a disadvantage in obtaining a job because she is a Guyanese native who has no work history in Canada. 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)). Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)(citing to *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985)).

In his evaluation, the psychologist who interviewed the applicant's spouse states that if she went to Canada to be with the applicant, she would be depressed by virtue of leaving her grown son and her grandson, who spends summers with his father. *Statement from* [REDACTED], dated April 13, 2006. While the AAO acknowledges this emotion, it observes that the evaluation fails to offer an analysis or clinical diagnosis of the depression that would be felt by the applicant's spouse upon relocation. Accordingly, the AAO finds the psychologist's observation to be of little evidentiary value in determining whether the applicant's spouse would suffer extreme hardship if she joined the applicant. When looking at the aforementioned factors raised in the Motion to Reconsider, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Canada.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. In the Motion to Reconsider, counsel states that the applicant's spouse is in a terrible physical and mental state. *Motion to Reconsider*. Counsel notes that the applicant's spouse's trips to Canada to visit the applicant are taking an extremely heavy toll on her physically, mentally and emotionally. *Id.* The record shows that the applicant's spouse has been interviewed on

two occasions by the same psychologist, August 12, 2005 and April 12, 2006. At the time of his second interview, the licensed psychologist found that the affect of the applicant's spouse was considerably more depressed than it had been in August 2005. *Statement from [REDACTED], P.C.*, dated April 13, 2006. He notes that the depression she is currently experiencing is a reactive situational depression resulting from her separation from the applicant. *Id.* As a reactive situational depression is based upon a reality experience, the psychologist states it cannot be fully alleviated by the administration of anti-depressant medication, even in combination with supportive psychotherapy. *Id.* He reports that her depressive symptomatology has increased exponentially over the last seven months and if this continues, she will be unable to function in her job, will be at risk for exacerbated suicidality and might have to be hospitalized. *Id.* The record also includes two additional statements that indicate the physical and mental impacts of separation on the applicant's spouse. *Letter written by [REDACTED], dated August 3, 2005; see also Letter written by [REDACTED], dated August 10, 2005.* When looking at the aforementioned factors, particularly the mental health condition of the applicant's spouse as documented by a licensed psychologist, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

Although the applicant has demonstrated in his Motion to Reconsider that his spouse would suffer extreme hardship if she remains in the United States, the record has failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States if she relocates to Canada. The applicant is therefore not eligible for a waiver of his inadmissibility under section 212(a)(6)(C) 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(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 AAO will affirm its previous decision.

ORDER: The decision of the AAO is affirmed.