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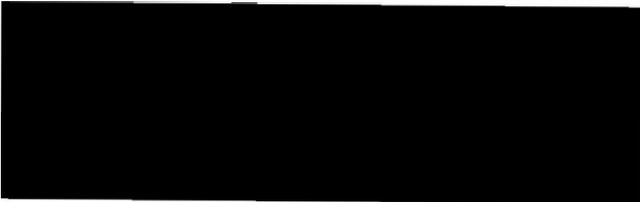
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ROME, ITALY

Date: APR 13 2009

[consolidated therein]

IN RE:

Applicant:



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, Rome, Italy, and 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 native and citizen of Portugal who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a fraudulent passport and visa. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 19, 2007.

On appeal, the applicant, through counsel, asserts “that under the circumstances in this case extreme hardship to the United States Citizen husband has been established.” *Form I-290B*, filed February 21, 2007.

The record includes, but is not limited to, counsel’s appeal brief, an affidavit from the applicant’s husband, and letters from the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

The record reflects that in December 1989, the applicant entered the United States by presenting a fraudulent passport and visa. In June 1994, the applicant departed the United States. On November 20, 1998, the applicant filed a Form I-601. On January 22, 1999, the Officer in Charge (OIC), Madrid, Spain, denied the applicant's Form I-601. On February 19, 1999, the applicant, through counsel, filed an appeal of the OIC's decision to the AAO. On September 30, 1999, the AAO dismissed the applicant's appeal. On December 17, 2001, the applicant attempted to enter the United States; however, she withdrew her application for admission after being found inadmissible for her previous misrepresentation. On November 21, 2005, the applicant's United States citizen husband filed a Form I-130 on behalf of the applicant. On February 14, 2006, the applicant's Form I-130 was approved. On July 7, 2006, the applicant filed another Form I-601. On January 19, 2007, the District Director, Rome, Italy, denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. Once 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Counsel claims that the applicant's spouse is suffering extreme hardship by being separated from the applicant. *See appeal brief*, filed March 26, 2007. The applicant's husband states he will "suffer emotional and psychological hardship" if the applicant is "not permitted to return to this country." *Affidavit from [REDACTED]* dated September 19, 2006. Counsel claims that the applicant's husband "has worked in the United States as a cook for 6 years and has been residing in the United States for such a long time that his employment opportunities in Portugal would be limited." *Appeal Brief, supra*. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Portugal. Additionally, the AAO notes that the applicant's husband is a native of Portugal, who speaks Portuguese, he spent his formative years in Portugal, and it has not been established that the applicant's husband has no family ties in Portugal. Counsel asserts that the applicant's 12-year-old son is suffering hardship by being separated from his father. *Id; see also letter from [REDACTED]*, dated July 7, 2006 ("Due to the separation of [their] family, [her] son, who is an American Citizen, is suffering deeply and desires to be reestablish with his father."). The AAO notes, as noted above, the applicant's son is not a qualifying relative for a waiver under section 212(i) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Portugal.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment. The applicant's husband states that he "cannot quit [his] job and return to Portugal permanently." *Affidavit from [REDACTED]*, *supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant's "son cannot live in the United States with his father because the father works and there is no one to take care of the son without [the applicant] being here." *Appeal Brief, supra*. The AAO notes that if the applicant's son moves to the United States to be with his father, it has not been established that the applicant's husband will be unable to provide or obtain adequate care for their son in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that beyond generalized assertions regarding country conditions in Portugal, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 husband has endured hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to 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)(i) 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.