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U.S. Citizenship and Immigration Services
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U.S. Citizenship
and Immigration
Services

H2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 21 2009

IN RE: [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)

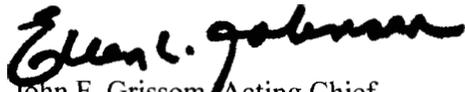
ON BEHALF OF PETITIONER:

[REDACTED]

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 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 Macedonia who has resided in the United States since December 24, 1991, when he was admitted as a visitor for pleasure after presenting a fraudulent Italian passport and B2 visa. He 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 to the United States through fraud or misrepresentation. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse and child.

The service center director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of Service Center Director* dated February 13, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in requiring the applicant to file an application for a waiver of inadmissibility because he was granted asylum and issued Form I-94, which created a “legal fiction that the applicant entered legally.” *See Counsel’s Motion to Reopen and Reconsider* dated March 9, 2007. Counsel contends that USCIS ignored regulations covering political asylees and states that section 209 of the Act, 8 U.S.C. § 1159 waives certain grounds of inadmissibility. *Id.* Counsel additionally asserts that illegal entry is forgiven for those that are granted asylum, but if the waiver application is deemed necessary, it is clear that the applicant’s wife and child would suffer extreme hardship if he is removed from the United States, and that this hardship should be reconsidered based on the fact that the applicant was granted asylum and should not be sent back to a country where he was found to fear persecution. *Id.* In support of the appeal, counsel submitted an affidavit from the applicant’s wife, a copy of an I-94 card and letter from the New York Asylum Office indicating that the applicant was granted asylum on March 21, 1997, copies of permanent resident cards and U.S. passports for the applicant’s relatives residing in the United States, a copy of the applicant’s marriage certificate and his son’s birth certificate, and copies of tax returns filed by the applicant and his wife. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Counsel asserts that the applicant should not have to seek a waiver of inadmissibility because he was granted asylum and his illegal entry was forgiven, and further states that certain grounds of inadmissibility are waived by section 209 of the Act. The AAO notes that the applicant did not apply for adjustment of status as an asylee under section 209(b) of the Act, but rather under section 245 of the Act, based on a Petition for Alien relative filed by his wife. See Application to Register Permanent Residence or Adjust Status (Form I-485) filed by the applicant on April 15, 2003. Further, even if the applicant had applied for adjustment of status as an asylee, section 209(c) of the Act does not automatically waive inadmissibility under section 212(a)(6)(C)(i) of the Act, but rather allows an applicant to seek a waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The applicant would be eligible to seek a waiver under section 209(c) of the Act by filing an Application By Refugee For Waiver of Grounds of Excludability (Form I-602) if he filed for adjustment of status under section 209(b) of the Act. But as an applicant for adjustment of status under section 245 of the Act, he does not qualify for this waiver and must establish extreme hardship to a qualifying relative as provided in section 212(i) of the Act.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Macedonia who has resided in the United States since 1991, when he was admitted after presenting a fraudulent Italian passport with a B2 visa. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant’s wife is a twenty-five year-old native of Macedonia and citizen of the United States whom the applicant married on September 19, 2002. The applicant and his wife currently reside in Staten Island, New York with their six year-old son.

The applicant's wife states that she would suffer extreme emotional and economic hardship if the applicant were removed from the United States. She states that the applicant has been the sole provider for the family, it would be very difficult to work and care for her child on her own, and their son would miss out on opportunities that others have in the United States if his father were removed. See *Affidavit of* [REDACTED] dated September 21, 2005. In a subsequent affidavit she states that she cannot imagine the applicant returning to a country where he suffered persecution, and “the thought of him returning is petrifying.” *Affidavit of* [REDACTED] dated March 12, 2007, at 3. She states,

My life since the denial of the waiver has been traumatic. My husband would have nowhere to go were he not able to remain in the United States. It has created fear and anxiety in our entire families, my parents, Arjanit’s parents, me and even our son. Forcing Arjanit to leave will destroy me. *Affidavit of* [REDACTED] dated March 12, 2007, at 5.

Counsel for the applicant asserts that his wife would suffer extreme emotional hardship if he is removed from the United States, but there is no evidence on the record concerning any emotional hardship she would suffer, such as evidence concerning her mental health or the potential psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse’s removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a

qualifying relationship exists. The AAO further notes that although the applicant's wife states that she fears the applicant living in a country where he feared persecution, the applicant was granted asylum in March 1997, and counsel did not submit documentation to support an assertion that the applicant would still be in danger if he returned to Macedonia at this time.

The applicant's wife states that she would be unable to support herself and their son without his income if the applicant is removed from the United States, and states that he has always been the sole breadwinner since they were married. In support of this assertion counsel submitted copies of their joint income returns, but no other evidence of the applicant's employment and income, such as a Form W-2 or a letter from his employer, or of the family's expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Although it appears the loss of the applicant's income would have a negative impact on the financial situation of his wife, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. The financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife and daughters. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel asserts that extreme hardship to the applicant's wife should be based on the fact that the applicant was granted asylum, and the U.S. government should not send him back to a country from which he was granted asylum. The applicant's wife asserts that she and her son would also suffer extreme hardship if they relocated to Macedonia because of poor economic conditions and separation from family members in the United States, and she states that the applicant feels strongly about this as well, "since his suffering was to such a degree that his life was at risk." *Affidavit of [REDACTED]*, dated March 12, 2007, at 3. She states that she does not want to raise their child in Macedonia, "a country of suffering, abject poverty and where [she] had an extremely unhappy childhood." *Id.* She further states that they are an extremely close family and she sees her parents every day and cannot imagine being separated from her family or living anywhere else. *Id.* at 2.

As noted above, although the applicant was granted asylum based on a well-founded fear of persecution in Macedonia, this application was granted in 1997, and counsel did not submit documentation to support an assertion that the applicant would still be in danger if he returned to Macedonia at this time. Further, no evidence was submitted concerning economic or social conditions in Macedonia to support the claim that the applicant's wife and son would suffer hardship if they relocated to Macedonia with the applicant. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*.

The emotional and financial hardship the applicant's wife would experience if he is removed from the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390

(9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely 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.