



U.S. Citizenship
and Immigration
Services

Hr

[REDACTED]

FILE: [REDACTED] Office: CHICAGO, ILLINOIS

Date: **DEC 03 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. 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 citizen of Montenegro who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. 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 with his wife in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated May 7, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on January 12, 2006; two letters from a letter from the applicant; letters from physician, including a letter from Montenegro; copies of medical records; letters from the applicant's parents' physicians; a letter from mother's physician; a psychosocial assessment of tax documents; several letters of support; a copy of the applicant's sworn statement; documents addressing the economy and unemployment rates in Montenegro; a letter from employer; numerous copies of photographs of the applicant, his friends, and family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides:

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

The record shows that in March 2000, the applicant entered the United States using a passport that did not belong to him. Counsel does not contest that the applicant entered the country using another person's passport, but rather, contends that the applicant did so in order to flee a country in turmoil and to reunite with his family. *Letter from* [REDACTED] dated June 16, 2009 (requesting the AAO consider the reasons for his actions "in mitigation of the fraud/misrepresentations committed"). Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Morales*, 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 under the Act. These 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.

In this case, the applicant's wife, [REDACTED], states that she has been admitted to the hospital twice for severe abdominal pain and bleeding. She states she has been diagnosed with Polycystic Ovarian Syndrome ("PCOS") due to cysts growing on her ovaries, which gives her a difficult time to menstruate normally and conceive children, and puts her at a higher risk of getting cervical cancer. [REDACTED] contends she sees her physician every three months and takes a medication to help treat menstrual disorders, treatment that is expensive and covered by her health insurance. [REDACTED] states that PCOS is untreatable. She contends her PCOS has taken a large toll on her mental state and that she has gone into days of depression. [REDACTED] states this disorder is not treatable in Montenegro and fears she will get cervical cancer if she moves to Montenegro. [REDACTED] also states that her uncle recently died and that the PCOS, her husband's immigration problems, and her uncle's death has caused significant stress and anxiety for her such that she has lost her appetite, the ability to think rationally, and cries excessively.

In addition, [REDACTED] states that the applicant's parents, both of whom are lawful permanent residents, would suffer "pain and emptiness" if the applicant's waiver application were denied. [REDACTED] states that the applicant's father has diabetes, hypertension, and high cholesterol, and

contends she helps give her father-in-law insulin shots. She further states that the applicant's mother has hypertension and high cholesterol. She states that she and the applicant help the applicant's parents by taking them to doctor appointments, grocery shopping, and to pick up their prescriptions, and that they help them constantly with everyday chores. Furthermore, [REDACTED] states that her own mother also has many medical disorders and that she and her brother must help their mother.

Moreover, [REDACTED] explains that she and her husband started a cleaning/building maintenance business, [REDACTED]. She contends that her husband "is the main worker [and] without him the business will be forced to close." [REDACTED] states she works full-time at JPMorgan Chase and would be unable to run the couple's business on her own. She states her husband works more than sixty hours per week for the business and that she helps him on her days off. [REDACTED] claims she and her husband owe \$6,000 for a motorcycle and that if one of their two cars, which both have over 100,000 miles, broke down, she would be unable to afford repairs on her own.

In addition, [REDACTED] states she is looking to go back to school full-time to get a finance degree and that moving to Montenegro would prevent her from furthering her education. She states that although her parents are originally from Montenegro, she was born in the United States and her parents have lived in the United States for more than twenty-five years. According to [REDACTED] she does not speak, read, or write Montenegrin fluently and there is a different dialect that is spoken in Montenegro. [REDACTED] contends that all of her relatives live in the United States, including her parents, grandmother, two siblings, aunts, uncles, and cousins, all with whom she is very close, and states that they would be unable to visit her in Montenegro given how expensive it is to travel there. [REDACTED] states her grandmother is sixty-seven years old and a breast cancer survivor. [REDACTED] visits her grandmother regularly and wants to remain close to her. Moreover, [REDACTED] states she has a high intolerance for food that has not been pasteurized, which is a huge problem in Montenegro because milk and cheese are the main foods of Montenegro. *Letters from* [REDACTED] both undated.

A letter from [REDACTED] health care provider states that [REDACTED] was diagnosed with Polycystic Ovary Syndrome (PCOS) in December 2007 which "can lead to recurrent pregnancy loss and infertility." *Letter from* [REDACTED] dated February 20, 2008. Another letter states [REDACTED] has a history of infertility and is currently going through testing and possible in vitro fertilization for which she will need her husband in the United States. *Letter from* [REDACTED] dated May 21, 2009; *see also Letter from* [REDACTED] dated April 16, 2006 (stating [REDACTED] "will continuously need medical attention until pregnancy has occurred"). The record also contains a copy of a prescription from a fertility clinic.

In addition, the record contains a translation of a letter from Montenegro. This letter specifically names [REDACTED] states that she has been "[m]arried: 3 years," and contends that "[b]ased on the results of examinations the diagnosis reached: Sy PCO, Infertilitas primaria [sic]." The letter further states, "[f]urther treatment recommended by assisted reproductive techniques: IVF, ICSI is not available [in] Montenegro." *Letter from* [REDACTED] undated.

Copies of [REDACTED] medical records indicate that in January 2007, she was admitted to the emergency department with “abdominal pain described as severe, stabbing, sharp pain.” The records state the pain makes it difficult for her to walk or lift her right leg. *St. Francis Hospital, Physician Notes*, dated January 2, 2007.

A Psychosocial Assessment of [REDACTED] by a clinical psychologist states that [REDACTED] uncle committed suicide in Montenegro in August 2007. According to the assessment, [REDACTED] and her father continue to grieve this loss and if [REDACTED] moved to Montenegro, “she would be confronted with the place in which her uncle committed suicide, which she anticipates to be traumatic for her [and] very upsetting for her father.” The assessment further states that [REDACTED] has “volatile emotions, angry outburst and crying almost every day.” In addition, the assessment noted that [REDACTED] was constantly preoccupied with her husband’s immigration status to the extent that it distracts her from work and interferes with her ability to concentrate, and described her as “obviously distracted . . . [and] a bit scattered.” The assessment concludes that [REDACTED] has an adjustment disorder with mixed anxiety and depressed mood, and is at risk of major depression if her husband is deported. The psychologist recommended weekly or biweekly psychotherapy sessions. *Psychosocial Assessment of [REDACTED] by [REDACTED]* dated April 16, 2008.

A letter from [REDACTED] mother’s physician states that [REDACTED] mother is being treated for anxiety, depression, hypercholesterolemia, osteoarthritis, and obesity, and that she takes six medications for her conditions. *Letter from [REDACTED]* dated May 13, 2009. A letter from the applicant’s mother’s physician states that the applicant’s mother has hypertension, hypercholesterolemia, and hypertriglyceridemia. *Letters from [REDACTED]*, dated May 18, 2009, and March 29, 2008. A letter from the applicant’s father’s physician states that the applicant’s father has diabetes, hypertension, and hypercholesterolemia. The letter also states he is currently on insulin therapy to control his blood sugar and takes four medications to control his hypertension. *Letters from [REDACTED]*, dated May 14, 2009, and April 3, 2008.

Upon a complete review of the record evidence, the AAO finds that the applicant has not established extreme hardship to a qualifying relative if his waiver application is denied.

The AAO finds that the record contains a significant inconsistency, which detracts from the credibility of the evidence regarding [REDACTED] medical condition. Specifically, the letter from Montenegro purports to have diagnosed [REDACTED] with “Sy PCO,” “[b]ased on the results of examinations.” *Letter from [REDACTED] supra*. This letter is undated, but states that [REDACTED] has been married for three years. Considering the record shows that [REDACTED] was married in January 2006, the letter from Montenegro suggests she was in Montenegro for a medical exam in January 2009. However, this letter contradicts two letters of support in the record that state [REDACTED] has not visited Montenegro since she was three years old. *Letter from [REDACTED]*, undated; *Letter from [REDACTED]* undated.

In addition, of the three letters from health care providers in the United States, the only mention of PCOS is a single sentence stating, "She was diagnosed with Polycystic Ovary Syndrome (PCOS) on 12/20/07." *Letter from* [REDACTED] dated February 20, 2008. The other letters and medical records in the record discuss fertility problems and amenorrhea, but make no mention whatsoever of PCOS. Although [REDACTED] may indeed have been diagnosed with PCOS, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of [REDACTED] PCOS. The single statement that she was diagnosed with PCOS and the suggestion she was examined in Montenegro when she purportedly had not been to Montenegro since she was three years old, is insufficient evidence of her purported medical condition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

With respect to [REDACTED] mental health, although the input of any mental health professional is respected and valuable, the AAO notes that the assessment in the record appears to be based on a single interview the psychologist conducted with [REDACTED]. As such, the record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] and there is no evidence that there is a history of treatment for depression or anxiety. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Furthermore, although the psychologist recommended weekly or biweekly therapy sessions, there is no evidence [REDACTED] has sought any treatment as recommended.

Regarding the applicant's financial hardship claim, the record shows that [REDACTED] works full-time at a bank earning \$26,000. *Letter from JPMorgan Chase Corporate Business Services*, dated March 1, 2008 (stating [REDACTED] has been employed since May 1, 2006, as a sales associate and earns an annual base salary of \$26,000). The applicant has not addressed whether [REDACTED] could live on her salary alone. In addition, the record shows that the applicant and his wife started a cleaning business in 2006. Although the record indicates that the applicant is the primary worker for the business, the applicant has not addressed whether another worker could be hired to continue the business. In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Moreover, the record does not show [REDACTED] would suffer extreme hardship if she moved to Montenegro with her husband to avoid the hardship of separation. Although [REDACTED] mother has several medical problems, aside from "be[ing] there to support her," [REDACTED] does not specify what type of assistance her mother needs and [REDACTED] does not elaborate on how she helps her mother. *Letters from* [REDACTED] *supra*. With respect to the applicant's parents,

who also have medical problems, although [REDACTED] specifies that she helps give her father-in-law insulin shots, takes them to doctor appointments and grocery shopping, picks up their prescriptions, and help them with household chores, the applicant's parents live with the applicant's brother's family. *Id.* Aside from stating that the applicant's brother and sister-in-law "work[] inflexible hours," there is no suggestion they are unable or unwilling to assist the applicant's parents. *Id.*

If [REDACTED] decides to remain in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for a waiver of inadmissibility under section 212(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.