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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
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FILE:

Office: MIAMI (TAMPA), FL

Date:

JUL 14 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).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, 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 of Palestinian nationality, born in Kuwait, 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), when in 1999, in an attempt to obtain a visa from the U.S. Embassy in Lima, Peru he presented a fraudulent Ghanaian passport and fraudulent entry and exit stamps to and from Peru. The record indicates that the applicant has a history of residency in Algeria, Libya, and Peru. The record also indicates that the applicant is married to a U.S. 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 his United States citizen spouse and stepdaughter.

The district director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated December 12, 2006.

On appeal, the applicant, through counsel, asserts that the district director "erred in its denial of the waiver...based on extreme hardship to the alien, the alien's U.S. citizen spouse and/or child." *Form I-290B*, filed January 8, 2007.

The record indicates that in 1999 the applicant submitted to the U.S. Embassy in Lima, Peru a fraudulent Ghanaian passport with fraudulent entry and exit stamps to and from Peru in an attempt to obtain a H1B nonimmigrant visa to the United States. On or about August 22, 2000, the applicant entered the United States without inspection. On April 25, 2001, the applicant's United States citizen brother filed a Form I-130 on behalf of the applicant. On September 8, 2004, the applicant's spouse filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 12, 2006, the applicant's Form I-130 filed by his U.S. citizen spouse was approved. On May 17, 2006, the applicant filed a Form I-601. On December 12, 2006, the district director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

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 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 U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or his stepchild experiences upon removal is not considered in section 212(i) waiver proceedings; unless it is shown that hardship to them is causing hardship to the applicant's 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).

The AAO notes that the record contains several references to the hardship that the applicant's stepdaughter would suffer if the applicant were denied admission into the United States. Documentation to support these claims includes a psychological evaluation by [REDACTED] Ph.D., dated January 25, 2007 and a letter from [REDACTED] concerning the medical problems of the applicant's stepdaughter. Again, as stated above, 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 his U.S. citizen or lawfully resident spouse and/or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to U.S. citizen or lawfully resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's stepdaughter will not be considered, except as it may cause hardship to the applicant's spouse.

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.

The AAO notes that as a Palestinian national the applicant's country of citizenship or legal residence is in question. The record does not contain documentation to definitively establish the applicant's country of citizenship or his ability to be returned to any one country. The record shows that he has established ties to Kuwait, the country where he was born; Syria, a country which previously issued him a travel document; and Israel.¹ Counsel has submitted documentation regarding the hardship the applicant's spouse would face if she were to be relocated to any one of these locations. The AAO notes further that it recognizes the obstacles this situation brings when trying to establish extreme hardship to a U.S. citizen spouse upon relocation and will analyze the documents presented accordingly.

In the applicant's case, the record indicates that the applicant's spouse was born in the Dominican Republic, she has no family or other ties to the Middle East, she does not speak Arabic, and she is the Christian wife of a Muslim man. Counsel asserts that if the applicant's wife and stepdaughter join the applicant in Kuwait, "as females in an Arab-Muslim society, [they] will be placed in danger and will suffer a loss of freedom." *Appeal Brief*, page 7, dated February 6, 2007. Counsel submits country reports regarding country conditions in Israel and the Occupied Territories, Kuwait, and Syria. The reports concerning Syria and Kuwait show that by relocating to either of these countries the applicant's spouse would face restricted civil liberties, limited freedom of religion and movement, and violence and discrimination against women (especially non-citizens). *See 2005 State Department Country Reports on Human Rights Practices in Syria and Kuwait*, page 1. If the applicant's spouse relocated to Israel and the Occupied Territories she would face societal violence and discrimination against women and, as the wife of an Arab citizen, institutional, legal, and societal discrimination. *See 2005 State Department Country Report on Human Rights Practices in Israel and the Occupied Territories*, page 1. Counsel also submits two reports regarding the treatment of Palestinian refugees in the Middle East, one particularly addressing the issue of Palestinian refugees in Kuwait. These reports indicate that Palestinian refugees face financial and residency insecurity in the Middle East as well as restrictions on their freedom and economic development. The AAO finds that as a non-Arabic speaking Christian women married to a Muslim, Palestinian refugee the applicant's spouse would suffer extreme hardship as a result of relocating to the Middle East.

However, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her employment and in close proximity to her family. In her brief, counsel claims that the applicant and his spouse have incurred various financial responsibilities, including a home mortgage. The AAO notes that documentation in the record establishes that the applicant's spouse is the primary wage earner for the family. 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).

¹ The AAO recognizes Syria's previous willingness to issue the applicant a travel document is not an indication that they will issue a travel document for his relocation in the future.

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 spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States 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 spouse 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 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.