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FILE:



Office: VIENNA, AUSTRIA

Date: JUN 08 2009

IN RE:



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: SELF-REPRESENTED

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 Officer in Charge (OIC), Vienna, Austria, denied the instant waiver application, which 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 Ukraine, and the spouse of a U.S. Lawful Permanent Resident (LPR). The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to live in the United States with his wife.

The district director found that the applicant had failed to establish extreme hardship to his LPR spouse and denied the application. On appeal the applicant submitted a statement pertinent to hardship. Although the applicant did not appear to contest the OIC's determination of inadmissibility, the AAO will review that determination.

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.

The record shows that, on January 22, 1999, the applicant attempted to enter the United States at JFK Airport in New York. In seeking admission, the applicant submitted a document, which is in the record, showing that he was to join the merchant vessel, Oriental Sky, when it landed in Houston, Texas. That document was on letterhead of Cardiff Marine, Inc., and gave telephone and fax numbers for that company and an address in Houston, Texas. The body of that document purported to show that it was issued by Weaver Marine Agencies, Ltd. It listed an address in Metairie, Louisiana and gave the same telephone and fax numbers as it gave for [REDACTED]

The record contains a transcript of a sworn statement that the applicant gave to an officer of INS. In that statement, the applicant indicated that he was a recent graduate of a maritime school and had been instructed to join the Oriental Sky in Houston.

The INS officer stated that the telephone numbers on the faxed document the applicant presented were called. The telephone number was a beeper number. The fax number corresponded to a private residence in New Jersey. Houston, Texas directory assistance had no listing for Cardiff Marine and no listing for Weaver Marine. A call was placed to the Houston Maritime Exchange, which reported that it had no ship named Oriental Sky on their list of existing ships, and that, in any event, no such ship was due to arrive in Houston.

Because the applicant stated that someone was to meet him and take him to Houston, an employee of the airline on which the applicant had arrived was sent to the waiting area to see if any such person was there. A man there stated that he was to meet someone named [REDACTED], who would be wearing a brown jacket and carrying a Puma bag. That description corresponded to the applicant's name and

clothing. That person stated that he was to purchase tickets to send [REDACTED] to Chicago. When asked why the man would be taking him to Chicago, the applicant replied that he did not know, and reiterated that his ship was in Houston. The applicant was found to be inadmissible and ordered removed.

On November 21, 2005, the applicant applied for an immigrant visa. It was denied because the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The denial of that application led to the submission of the waiver application in the instant case.

The evidence in the record is sufficient to demonstrate, and the AAO finds, that the applicant knowingly misrepresented his purpose in attempting to enter the United States, which is a fact material to the determination of his admissibility, and that he presented counterfeit documents in support of his material misrepresentation. The applicant thereby committed fraud and misrepresentation as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection.

The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

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 . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative

pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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 support of the waiver application, the applicant submitted a statement dated August 6, 2006. Although the letter was not composed in standard English idiom, the AAO understands it to assert that because the applicant was found inadmissible he continues to live in Ukraine with his two children, which separates them from their mother and him from his wife, who is in the United States. The applicant also indicated that failure to grant the waiver of inadmissibility would cause further extreme hardship to him and his children.

More specifically, the applicant stated that the separation of his children from their mother, “has negatively affected their development, mental condition, and . . . their health.” He stated that his son has had colds and, more recently, gastritis. The applicant stated, “the reference is applied,” which the AAO takes to mean that evidence in support of that assertion was attached.

The applicant further stated that his daughter has become more introverted and has insulated herself from her friends, and that her grades have dropped.

The applicant indicated that he has suffered from depression, and has seen a psychologist and a psychoneurologist. The applicant also appeared to state that he had lost his job. Again, the applicant stated, “the reference is applied,” which the AAO again takes to mean that he attached supporting evidence.

The applicant asked that his waiver application be reconsidered in light of his financial and psychological state. The applicant did not directly address hardship that failure to grant the waiver application would occasion to his wife, who is the only qualifying relative in this matter.

The record contains what purport to be translations of various documents from Ukrainian to English. One translation states that the applicant has been seen by a psychoneurologist and diagnosed with

“emotional lability” and depression, but gives no additional detail. The original of that document was not provided.

Another of the translations states that the applicant’s son, _____ was seen at a hospital and diagnosed with acute bronchitis in remission and “acute gastroduodinit,” by which the translator likely meant acute gastroduodenitis. That translation further states, “The child needs good care.” The original of that document was not provided.

The applicant and his children are not qualifying relatives in this matter, and hardship to them is not directly relevant to the approvability of the waiver petition. Nevertheless, the AAO accepts that hardship to them will affect the applicant’s wife, causing some degree of hardship to her, and will thus consider the evidence pertinent to hardship to the applicant and his children.

That the applicant has been seen by a psychoneurologist does little to indicate that hardship will result to his wife if the waiver application is denied. The document provided does not specify the seriousness of the applicant’s emotional lability and depression. There is no indication that his conditions were caused by his inadmissibility to the United States, or that approving the waiver application will assuage his conditions.

The translation pertinent to the applicant’s son’s hospital visit is also of little value in showing that denying the waiver application will cause the applicant’s wife hardship. The applicant appears to have had acute, rather than chronic, bronchitis, and to be recovering. The seriousness of his gastroduodenitis is not stated. That it is related to the applicant’s inadmissibility is not stated. That approval of the waiver application will correct the condition is not stated.

The record contains no indication that any psychological or medical hardship to the applicant’s wife will result from denying the waiver application or will be corrected by its approval.

The applicant stated that he is in financial distress and appeared to indicate that he had lost his job. No evidentiary support was provided for either proposition. Although the statements by the applicant are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The remaining consideration is the emotional hardship that denying the waiver application will cause to the applicant’s wife. Although the applicant did not address this point directly, the AAO notes that in nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme*

hardship,” Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one’s spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Further, no evidence or argument was provided to demonstrate that the applicant’s wife would suffer extreme hardship if she relocated to Ukraine.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s wife faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is removed from the United States.

The record demonstrates that the applicant has loving and devoted family members who are concerned about the applicant’s immigration status. Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

The AAO therefore finds that the applicant failed to establish extreme hardship to his LPR spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.