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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: MAR 18 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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 Mexico and the beneficiary of an approved Form I-130 petition. 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 record reflects that the applicant is the husband of a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

Prior to the filing of the instant waiver application, this case had a complicated procedural history, with various Form I-130 petitions, I-485 applications, I-601 applications, and a motion to reopen being filed at various times. Today's decision is concerned with the Form I-130 Petition for Alien Relative, Form I-485 Application for Adjustment of Status, and Form I-601 Application for Waiver filed on or after November 9, 2004. However, all of the evidence in the record will be considered, regardless of when it was filed.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the waiver application. On appeal counsel provided additional evidence and asserted that the evidence shows that the applicant's wife would suffer extreme hardship if the waiver application is not approved.

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 December 31, 1995, the applicant applied to enter the United States at the San Ysidro Port of Entry. The applicant presented a valid Mexican passport issued to [REDACTED], with the photograph altered. The applicant claimed to be [REDACTED]. The applicant subsequently admitted that he was not, in fact, [REDACTED] but had purchased the passport for \$20. The applicant was taken into custody. On January 5, 1996, an immigration judge ordered the applicant excluded and deported from the United States. In a June 20, 2006 statement in the record, the applicant admitted that on December 31, 1995 he "tried to enter the United States using a photo-substituted Mexican passport in the name of another person."

The applicant did not contest the district director's determination of inadmissibility, and the AAO finds that the applicant knowingly presented a falsified passport and misrepresented his identity, 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) 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 on admission imposes an 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 relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant’s wife is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 a letter dated July 17, 2001, the applicant’s employer stated that the applicant was then working as a carpenter. In his June 20, 2006 statement, the applicant indicated that he would be unable to find

carpentry work in Mexico, but did not state why that would be so. He also stated that because his wife is a United States citizen, she would be unable to work there, but provided no evidence pertinent to that assertion. Absent supporting evidence, little weight can be accorded that assertion. 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)).

In a declaration dated April 23, 2005 the applicant's wife stated that the applicant would be unable to find work in Mexico because he is a carpenter and Mexican houses are predominantly of masonry construction. The applicant's wife provided no evidence to support the contention that carpentry work is not available in Mexico.

Although the statements by the applicant and his spouse 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)).

In her June 4, 2002 declaration, the applicant's wife stated that she and her husband wish to remain together, that being separated would be difficult for them, and that if he goes to Mexico she would follow him. A letter, dated April 20, 2005 from the applicant's wife's sister, [REDACTED] states that the applicant's wife would be very unhappy without him.¹

In her April 23, 2005 declaration, the applicant's wife reiterated that she would remain with her husband if he were forced to live in Mexico, citing her religious faith, but said that she would be very unhappy there, as her family is all in the United States. In his June 20, 2006 declaration, the applicant stated that he believes that his wife would accompany him if he is removed to Mexico, but that she would be very unhappy there, as her family is all in the United States and she has no ties to Mexico.

The record contains a Psychological Evaluation, dated April 7, 2003, from a psychologist. In her report the psychologist stated that the applicant's wife is depressed over the applicant's immigration difficulties, is anxious, and as a result has headaches and is losing hair. The psychologist stated that the applicant's wife's scores on the Minnesota Multiphasic Personality Inventory suggest that she may be suffering from Panic Disorder. She noted that people with those results are often moralistic, self-righteous, demanding, and manipulative. In her recommendations the psychologist concluded that the applicant's absence would have "tremendously negative effects" on the applicant's wife and be detrimental to her.

¹ The record also contains other letters, not listed here, from the applicant's wife's other siblings. Because those letters do not specifically address the hardship the applicant's wife would encounter if the applicant is removed from the United States, however, they are not directly relevant to the instant decision.

In a letter dated March 4, 2003 the applicant's wife stated that because she was then stressed and depressed about her husband's immigration difficulties she was going to seek psychological assistance. The record contains another Psychological Evaluation, dated April 20, 2005, from the same psychologist who provided the April 7, 2003 evaluation. In that report the psychologist stated,

[The applicant's wife] has been depressed over [the possibility that the applicant may be removed from the United States] for an extended period of time. When asked to address this issue, she began crying. She reports crying several times a week over this issue. She also is having great difficulty going to sleep, requiring nearly an hour to get herself to sleep. She is also very anxious about this problem. In the past, she would occasionally have panic attacks related to this issue. Now the panic attacks have mounted and are occurring multiple times per day.

The psychologist stated that the applicant's wife is experiencing a severe mental disorder and that professional observation and care are appropriate. The psychologist stated, "[T]here are few options, other than extended psychotherapy[,] for the applicant's wife." The psychologist added that the applicant's wife has been seriously affected by the threatened removal of her husband and that her emotional condition would be highly exacerbated if he leaves.

The psychologist stated that the applicant's wife cried during their interview. She also reported that the applicant's wife uses emotional displays to manipulate people.

A letter, dated April 21, 2005, from the applicant's wife's brother [REDACTED], states, "Since [the applicant and the applicant's wife] have been together, I cannot remember a time that I have seen her sad, unhappy or disappointed." This casts considerable doubt on the assertion of the psychologist, that the applicant's wife has suffered from serious depression and anxiety beginning no later than April 7, 2003 and continuing until at least April 20, 2005.

In any event, the applicant's brother-in-law's statement appears to conflict with the psychologist's statement. The applicant's brother-in-law indicated that he has not seen his sister unhappy since 2000, when she and the applicant married. The psychologist indicated, both on April 7, 2003 and on April 20, 2005, that the applicant's wife's behavior at her office manifested severe depression.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Nothing in the record suggests that the applicant's wife has received receiving regular psychiatric care. Rather, the evidence suggests that she consulted with a psychologist twice, at intervals approximately two years apart, as necessary to obtain letters for use as evidence in the instant case. The psychologist's reports contain no evidence that he conducted therapy with the applicant's wife either before or after their meetings. Although the applicant stated, in her March 4, 2003 letter, that

she intended to seek psychological assistance, and although the psychologist stated that professional observation and care are appropriate to the applicant's wife's condition, and that extended psychotherapy is among the applicant's wife's few options, the record contains no indication that the applicant's wife has ever sought treatment for any symptoms related to stress, anxiety, or depression. The evidence in the record does not establish that the applicant's wife is experiencing or will experience emotional hardship greater than that that is normal in similar situations.

In a notarized statement dated June 4, 2002 the applicant's wife stated that she and her husband would like to have children but were waiting for applicant's immigration status to be settled.

A letter, dated July 29, 2002, from a medical doctor specializing in obstetrics, gynecology, and infertility states that the applicant's wife was then being treated for infertility in order to become pregnant, and must, for the treatment to be successful, remain with her husband. The doctor did not state when that treatment had commenced. The doctor also stated that the applicant's wife must remain in the United States in order to receive the best treatment, and that his office does not recommend that she see a doctor outside of the United States because she has already started treatment with his office. The record contains another, essentially identical, letter from the same doctor dated March 31, 2003.

On appeal, counsel informed the AAO, in a letter dated February 13, 2008, that the applicant's wife had become pregnant through *in vitro* fertilization. Counsel noted that the applicant's wife's doctor recommends, because this is a high-risk pregnancy, that the applicant remain with his wife. Counsel also stated that the *in vitro* procedure is expensive, and that both the applicant's and applicant's wife's income is necessary to pay for it.

Counsel provided a letter, dated February 6, 2008, from a medical doctor. That doctor is from the same practice as the doctor who provided the two previous letters. The doctor stated that the applicant's wife had become pregnant through *in vitro* fertilization, and that, because her pregnancy is high-risk he recommends that the applicant remain with his wife. That letter indicates that the applicant's wife's first obstetrics examination was on January 14, 2008. The doctor implied that the applicant's wife was already pregnant on that date. Counsel also provided a considerable quantity of medical bills and documents pertinent to prescriptions.

The applicant's wife was reportedly in a high-risk pregnancy on January 14, 2008. No reason exists to believe that she is now in a high-risk pregnancy, and counsel has not supplemented the record with evidence concerning the outcome of the pregnancy.

As was noted above, the applicant's wife stated, on June 4, 2002, that she and the applicant intended to wait until after the applicant's immigration status was settled in order to have children. Less than two months later, not only had they decided to have children immediately, but had already sought professional assistance to determine why the applicant's wife was not yet pregnant. On appeal, counsel has revealed that the applicant's wife became pregnant through artificial insemination.

This chronology reveals that the applicant and his wife were aware of the applicant's immigration difficulties when they decided to have a child. Equities acquired after a removal order has been entered, or a finding of inadmissibility has been made, may be accorded less weight. *Cf. Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980); *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992).

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 that arise when a spouse is removed from the United States.

The applicant's wife, if she accompanies him to Mexico to live, and is thus isolated from her family in the United States, will experience hardship on that account. This office notes that she is not obliged to accompany him. Further, the applicant's wife stated, in her April 23, 2005 statement, that her entire family lives in Indio, California. Indio, California is located roughly 100 miles from the Mexican border, which will facilitate the applicant's wife visiting her family in the United States or her family visiting her in Mexico. This greatly mitigates the hardship of the isolation she stated she will endure if the application is not approved.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. 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.

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 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, 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 AAO therefore finds that the applicant failed to establish extreme hardship to his wife 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.