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

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

H2

FILE:



Office: BANGKOK

Date: **MAR 19 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 PETITIONER:

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).

A handwritten signature in black ink, appearing to read "John R. Grissom".

John R. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand, and 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 Laos who is the beneficiary of an approved Petition for Alien Fiancé(e). On or about January 9, 2006, the applicant applied for a K-1 nonimmigrant visa and was found to be inadmissible 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 sought to procure a visa through fraud or misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to travel to the United States and marry her fiancé.

The district director found that that the applicant failed to establish that refusal of her admission would result in extreme hardship to her U.S. citizen fiancé and denied the waiver application accordingly. *Decision of the District Director* dated September 15, 2006.

On appeal, the applicant asserts that denial of the waiver application would result in extreme hardship to her U.S. citizen fiancé because they love each other very much and her fiancé misses her. *See Letter in Support of Waiver Application* dated June 6, 2006. The applicant further states that she did not disclose that she had been married during her interview for her nonimmigrant visa because no one asked her. *See letter from the applicant* dated May 4, 2006. In support of the waiver application and appeal, the applicant submitted letters from herself and her fiancé. 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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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.

The record reflects that the applicant is a thirty-eight year-old native and citizen of Laos who has never traveled to the United States. When applying for a nonimmigrant visa, she indicated to the consular officer that she had never been married and had never been denied a visa to the United States, although she had been denied a visitor’s visa twice in 2004. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for failing to disclose that she had previously been denied a visa. This misrepresentation was material because it would tend “to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that [she] be excluded.” See *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961). The record further reflects that the applicant’s fiancé is a fifty-seven year-old native of Laos and citizen of the United States. The applicant currently resides in Vientiane, Laos and her fiancé resides in North Las Vegas, Nevada.

The applicant's fiancé states that he loves the applicant dearly and misses her, and they have known each other for a long time and will always love each other. *See letter from [REDACTED] dated June 6, 2006.* The AAO notes that no documentation was submitted concerning the applicant's fiancé's mental health or the potential effects of separation from the applicant. 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)). The evidence does not establish that any emotional difficulties the applicant's fiancé would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his fiancée 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 deportation 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.

Any emotional difficulties or other hardship that the applicant's fiancé would experience if she is denied admission appear to be the type of hardships that family members 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). No claim was made that the applicant's fiancé would suffer extreme hardship if he relocated to Laos with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's fiancé would suffer extreme hardship if he moved to Laos.

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 her U.S. citizen fiancé 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.