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



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

*Hz*

[REDACTED]

FILE:

Office: MIAMI, FLORIDA

Date: **MAR 30 2009**

IN RE:

Applicant: [REDACTED]

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:

[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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED], is a native and citizen of Romania who was found to be inadmissible to the United States 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 seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain in the United States with his U.S. citizen spouse. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated April 21, 2006. The applicant submitted a timely appeal.

On appeal, counsel asserts, in part, that the adjudication officer did not weigh all of the hardship factors in determining hardship as the adjudication officer simply found that the applicant's spouse is not physically impaired or disabled. Counsel states that physical impairment or disability is not the only factor in finding hardship. Counsel states that the adjudication officer failed to consider that the applicant's spouse would not be able to run their business or financially support herself without the applicant, that her son cannot relocate to Romania and would have to remain in the United States with his father, that the psychological evaluation indicates that the applicant's wife will undergo stress and tension if her husband is deported, and that country reports reflect that the applicant and his wife will have difficulties finding employment and supporting themselves in Romania.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which 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 chapter is inadmissible.

The record reflects that the applicant procured entry into the United States by presenting to an immigration inspector a photo-switched Italian passport. The applicant's presentation of that passport, the AAO finds, constitutes a willful misrepresentation of a material fact, his identity, rendering him inadmissible under section 212(a)(6)(C) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse.

Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

Extreme hardship to the applicant's qualifying relative must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins him to live in Romania. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In support of the waiver application, the record contains letters, birth certificates, financial and business records, a divorce decree, psychological evaluations, property deeds, and other documentation.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Although counsel claims that the applicant's wife would be unable to financially support herself without her husband, the documentation in the record does not support that assertion. The record contains information regarding the applicant's wife's business, [REDACTED], now known as [REDACTED] a company owned and operated by the applicant and his wife. No documentation regarding its income was submitted, nor has it been established what role the applicant plays in the company or how his removal would affect its operation. 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).

There are two psychological evaluations performed by [REDACTED]. The evaluation dated July 15, 2005, relates to the applicant's spouse; in it, [REDACTED] states that the applicant's wife's 15-year-old stepson will be living with her throughout high school. [REDACTED] indicates that all of the applicant's wife's family members live in the United States and that she and the applicant started a business and bought a house together. He states that the applicant's spouse "will undoubtedly undergo a significant degree of stress and tension as a result of the deportation of her husband." [REDACTED]'s psychological evaluation of the applicant conveys that the applicant has anxiety and tension relating to his possible deportation.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation of the applicant's spouse is based on a single interview between her and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the stress and tension experienced by the applicant's spouse. 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 [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the Ninth Circuit has found that separating an applicant from his family members does not constitute extreme hardship. For example, *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that

“[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991) deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship)). And in *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the Ninth Circuit upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051.

The applicant’s spouse has anxiety and stress about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant’s spouse, if she remains in the United States without him, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s spouse, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

Counsel indicates that the applicant’s spouse would experience extreme hardship if she were to join her husband to live in Romania. He indicates that she would be separated from her son and that she and her husband would be unable to obtain employment and provide for themselves.

In the U.S. Department of State country report on human rights practices in Romania for 2004, counsel notes paragraphs discussing freedom of speech and of the press, the need for foreign citizens from certain countries, primarily from underdeveloped countries, to report to the police if they stay in private accommodations for 10 days or longer, education of children and their HIV/AIDS cases, and the minimum monthly wage not providing a decent standard of living for a worker and family.

However, counsel has not explained how those paragraphs specifically relate to the applicant’s wife. For example, she would not be required to report to the police because she is not from an underdeveloped country, and her son is healthy and there is no indication that he would attend school in Romania. Furthermore, the applicant has not shown that he or his wife would be unable to obtain employment or support themselves in Romania.

With regard to the applicant’s wife’s separation from her son, the AAO notes that he was born on July 2, 1990, and is now over 18 years old, and although separation from him would be an emotional hardship to the applicant’s wife, it is to be expected if she were to join her husband to live in Romania and, consequently, does not rise to the level of extreme hardship as required by the Act. The record as constituted is insufficient to show that her emotional hardship would be unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to the applicant's spouse if she were to remain in the United States without him, and alternatively, if she were to join him to live in Romania.

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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.