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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



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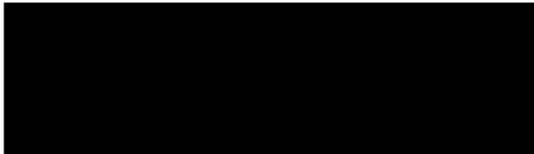
Date: **MAR 31 2009**

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.

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Jacksonville, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Syria 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. He 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 spouse.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 1, 2005.

On appeal, prior counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, prior counsel submits a brief and the current counsel on record submits a statement, dated February 17, 2009. The record also includes, but is not limited to, published country conditions reports; a statement from the applicant's spouse; and a psychological evaluation of the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (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.

The record reflects that the applicant used a false passport and visa to gain admission to the United States on or about June 28, 1998 at Miami, Florida. *Record of Statement Taken Under Oath or Affirmation*, dated November 3, 2003. The applicant is, therefore, inadmissible under Section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of lawful permanent resident or United States citizen family ties to 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 extreme hardship to the applicant's spouse must be established whether she resides in Syria or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

If the applicant's spouse travels with the applicant to Syria, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born and has lived her entire life in the United States. *Statement from the applicant's spouse*, dated December 1, 2003. She does not have any friends or family in Syria. *Id.* Counsel states that the applicant's spouse's chances of securing employment in Syria are remote in view of her total unfamiliarity with the Syrian language, religion, and culture. *Attorney's brief*. The applicant's spouse states that she does not speak Arabic and believes that as an American, she would have a difficult time adjusting to a new culture and customs. *Statement from the applicant's spouse*, dated December 1, 2003. Published country conditions reports note that Syria's economy faces serious challenges. *Background Note: Syria*, U.S. Dept. of State, Bureau of Near Eastern Affairs, dated August 2004. With almost 60% of its population under the age of 20, unemployment higher than the current estimated range of 20% - 25% is a real possibility unless sustained and strong economic growth takes off. *Id.* Additionally, the applicant's spouse notes that she has two daughters from a previous relationship who reside with

their biological father. *Statement from the applicant's spouse*, dated December 1, 2003. If she moves to Syria, she states that she would have to leave her daughters without the possibility of seeing them again in the near future. *Id.* Leaving the United States and moving to Syria would deprive her of fighting for their custody which she plans to do. *Id.* Prior counsel asserts that the applicant's spouse would be unable to pay child support if she were to live in Syria. *Prior Attorney's brief.* Additionally, published country conditions reports note that Syria is included on the Department of State's List of State Sponsors of Terrorism, and a number of terrorist groups present in Syria oppose U.S. policies in the Middle East. *Syria, Consular Information Sheet, U.S. Department of State, Bureau of Consular Affairs*, dated November 22, 2005. The Syrian government's human rights record remained poor, and it continued to commit serious abuses. *Syria, Country Reports on Human Rights Practices – 2003, U.S. Department of State.* Additionally, the United States Department of State has issued a Travel Warning for U.S. citizens considering travel to Syria, noting that a number of terrorist groups that oppose U.S. policies have offices in Syria. *Travel Warning, Syria, United States Department of State*, dated April 15, 2008. When looking at the aforementioned factors, particularly the applicant's spouse's lack of family and cultural ties to Syria, her inability to speak Arabic, the overall country conditions in Syria as documented by published reports, and the travel warning for Syria issued by the Department of State, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Syria.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. Prior counsel asserts that the psychological distress the applicant's spouse would suffer as a result of being separated from the applicant exceeds normal hardship. *Prior Attorney's brief.* According to the psychological evaluation contained in a letter from [REDACTED], referring the applicant's spouse for further treatment, the applicant's spouse has a limited ability to cope emotionally. *Referral letter from [REDACTED]*, dated November 17, 2003. The applicant's spouse suffered a series of traumatic events from the time she was a child through her young adult years. *Id.* She has suffered much loss in the past and has a history of substance abuse. *Id.* Since the time she has been with the applicant, she has turned her life around. *Id.* With the applicant's support, she has removed herself from a destructive environment, stopped using drugs, and has obtained a good job. *Id.* Upon knowing that she may be separated from the applicant, she has suffered from sleeplessness, anxiety and panic symptoms, and feelings of desperation. *Id.* In [REDACTED]'s opinion, she is likely to again develop dependence upon substances and to have problems with abuse and dependence. *Id.* He also notes that if the applicant is removed, the applicant's spouse will need intensive supportive psychological treatment to help her through the initial transition to this loss and to minimize the likelihood of a drug abuse relapse. *Id.* He further states that it will clearly be to her advantage if the applicant is allowed to stay and the applicant's spouse is able to avoid the tremendously severe psychological distress his removal will cause. *Id.* [REDACTED] letter also indicates that he is referring the applicant's spouse for treatment with psychotropic medication. *Id.* When looking at aforementioned factors, specifically the mental health issues of the applicant's spouse as documented by a licensed healthcare professional, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, and his unlawful residence in the United States.

The favorable and mitigating factors are the applicant's United States citizen spouse, the extreme hardship to his spouse if his waiver were to be denied, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.