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



U.S. Citizenship  
and Immigration  
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FILE:

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Office: COPENHAGEN, DENMARK Date:

MAY 22 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 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 Immigration Attache (IA), Copenhagen, Denmark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Somalia 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 attempted to procure entry into the United States by fraud or willful misrepresentation, and section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. On December 27, 2002, the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability, seeking a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), in order to reside in the United States with his U.S. citizen spouse.

On July 23, 2003, the IA issued a decision denying the application for waiver, concluding that the applicant has failed to establish that extreme hardship would be imposed on a qualifying relative due to his inadmissibility to the United States.

The applicant filed a Form I-290B, Notice of Appeal, on August 26, 2003. Counsel for the applicant conceded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, but contended that he is not inadmissible under section 212(a)(2)(A)(i)(I). Counsel further asserted that the IA erred in finding that the hardship to the applicant's wife due to his inadmissibility is not extreme. In support of his assertions, counsel submitted a brief and additional evidence.

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.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
  - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception. -- Clause (i)(I) shall not apply to an alien who committed only one crime if-
  - . . . .
  - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

- (h) The Attorney General [Secretary] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if-
  - . . . .
  - (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant initially attempted to enter the United States on January 8, 1999. He was found to be in possession of a fraudulent Danish passport and returned to Iceland, his point of departure. On August 9, 1999 he again attempted to enter the United States by presenting an altered Danish passport to a U.S.

immigration inspector. He was removed to Denmark. On November 1, 1999, he was found guilty of using a forged passport under section 171 of the Danish Penal Code by the court in Odense, Denmark and was sentenced to three months imprisonment. On November 6, 1999, the applicant was arrested at Copenhagen Airport for again attempting to leave Denmark using a forged passport. On January 13, 2000, the applicant was found guilty of a second offense of forgery under section 171 of the Danish Penal Code by the court in Odense, Denmark and was sentenced to sixty days imprisonment.

As he had committed fraud in an attempt to obtain entry into the United States, the IA correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The IA based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's convictions for forgery. On appeal, counsel asserted that the applicant's convictions are not for crimes involving moral turpitude, and, further, the applicant's convictions fall under the petty offense exception set forth in 212(a)(2)(A)(ii)(II) of the Act. Therefore, counsel contended, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I).

The AAO finds counsel's assertions to be without merit in this instance. Counsel claimed in his brief that the applicant's convictions are not crime involving moral turpitude without presenting any legal support for his claim. A review of the record and case law indicates that immigration fraud involving the intentional use of a forged passport is a crime involving moral turpitude. *See, e.g., Matter of Correa-Garces*, 20 I&N Dec. 451 (BIA 1992) (a conviction for making false statements on an application for a passport in another person's name, and for willfully, knowingly, and with intent to deceive, falsely representing a social security account number as one's own, for the purpose of fraudulently obtaining a passport in another person's name, is for a crime involving moral turpitude); *Omagah v. Ashcroft*, 288 F.3d 254 (5<sup>th</sup> Cir. 2002) (conviction for conspiracy to obtain, possess, and use forged, counterfeited, and falsely made immigration documents was a conviction for a crime involving moral turpitude).

The AAO also does not find persuasive counsel's claim that the petty offense exception apply. The statute states that the exceptions under section 212(a)(2)(A)(ii) of the Act shall apply to "aliens who committed *only one crime*" [emphasis added]. 8 U.S.C. § 1182(a)(2)(A)(ii). There is no dispute that the applicant in this case has two separate convictions for offenses committed on two separate occasions, and, as discussed above, both convictions are for a crime involving moral turpitude. Accordingly, the AAO finds that the IA also correctly found the applicant to be inadmissible under section 212(a)(2)(A)(i)(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 lawful permanent resident spouse or parent of the applicant. Section 212(h) of the Act also includes the applicant's children as qualifying relative, although it is noted that the applicant in this case has no children. 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. Once

extreme hardship to a qualifying relative 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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.

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).

U. S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On his Form I-601, the applicant indicated that he is claiming eligibility for a waiver through his wife, [REDACTED], who is a citizen of the United States. Along with the Form I-601, the applicant submitted an affidavit from his wife dated November 30, 2004; a psychological evaluation of [REDACTED] by [REDACTED], dated October 3, 2002; a copy of a settlement statement dated April 12, 2002 relating to the mortgage on the property at [REDACTED] stated address;

and an undated letter from [REDACTED], stating that [REDACTED] "suffers from recurrent abdominal pain and gastrointestinal upset" due to separation from her husband.

In her affidavit, [REDACTED] stated that if her husband is denied permission to join her in the United States, she would suffer "severe emotional and financial hardships as well as the continuing hardships based on [her] diminishing time available to [her] to begin a family." She referred to the report from [REDACTED] and letter from [REDACTED] as corroboration of her psychological difficulties. She stated that she needs the applicant in the United States in order to start a family with him. She also stated that she had taken a mortgage out on a home in anticipation of her husband's arrival and, without him, she would need to find renters in order to pay for the home.

According to [REDACTED] report, [REDACTED] had an abusive childhood in Somalia and was forced into an arranged marriage at age 16. She divorced her first husband in 1993 and began communicating with the applicant, whom she had known since childhood. [REDACTED] stated that [REDACTED] reported that she has a very good relationship with the applicant, but suffers numerous symptoms of depression -- including weight loss, sleep disturbance, sadness, headaches, and an ulcer -- when she is away from him. [REDACTED] concluded that [REDACTED] is likely to suffer from both major depressive disorder and post-traumatic stress disorder, the latter most likely based on her previous abusive marriage. [REDACTED] suggested that the symptoms of depression are attributable in part to her current situation, and also to the early childhood loss and abuse she had experienced. [REDACTED] opined that her marriage to the applicant is central to her health, and her psychological suffering would likely continue or worsen if her husband were not allowed to enter this country.

In denying the application for waiver of inadmissibility, the IA concluded that the evidence failed to demonstrate that the applicant's wife would experience extreme hardship due to the applicant's inadmissibility to the United States.

On appeal, counsel contends that the IA's finding that the applicant's wife would not suffer extreme hardship is in error. Counsel proceeded to discuss country conditions in Somalia and [REDACTED] past experience in that country, concluding that the severity of her past situation is the reason why she now needs a secure situation to recover emotionally. Additional evidence submitted on appeal included another letter from [REDACTED], in which she reiterated her desire to be reunited with the applicant in order to start a family. She also stated that her health is steadily declining, and that she was taking medication for depression, anxiety, sleeping disorders and ulcers. [REDACTED] also submitted (1) a letter dated June 4, 2004 from [REDACTED], of Prince William OB/GYN Associates Ltd., confirming that [REDACTED] is a patient and that she is trying to conceive and requires her husband's presence in the United States, and (2) a letter from [REDACTED], of Manassas Family Medicine, stating that she "has been suffering from some chronic health concerns most recently and notably fatigue and depression."

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

The AAO recognizes that the applicant's spouse is suffering emotionally and psychologically due to her separation from the applicant. However, the evidence submitted does not indicate that she is suffering from any severe medical or psychological problems that would render her hardship "extreme." The letters from her physicians refer generally to symptoms due to stress without describing in any detail the duration or severity of such symptoms, or the treatment prescribed for them. With respect to the evaluation by [REDACTED], it is noted that his report is based on an interview with the applicant's spouse specifically for the purposes of this waiver application and does not reflect an ongoing relationship between [REDACTED] and a mental health professional, nor does it reflect any history of treatment for the generalized psychological symptoms suffered by [REDACTED]. While the input of any mental health professional is respected and valuable, 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. Consequently, the evidentiary value of [REDACTED]'s report in terms of demonstrating extreme hardship to the applicant's spouse is substantially diminished.

[REDACTED] claim that she would suffer extreme financial hardship in the event she remains in the United States without the applicant is likewise insufficiently supported by the evidence. [REDACTED] report indicated that she has been employed since 1996 at Sunrise Assisted Living and has risen to the level of director of a division. There is no evidence that [REDACTED] has been or will be dependent on the applicant for financial support. Further, the single document submitted relating to her mortgage contains insufficient information to substantiate her claim that she needs the applicant to help her pay for her home.

In all, the evidence fails to demonstrate that the applicant's spouse would suffer "extreme hardship" if she were to remain in the United States without the applicant.

In addition to establishing extreme hardship to his spouse in the event she remains in the United States without him, the applicant must also establish extreme hardship to his spouse in the event that she relocates overseas to be with him. The applicant has failed to provide any evidence that would establish that his spouse would suffer hardship if she were to relocate to Denmark, where the applicant now resides. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See 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)). It is noted that counsel described at length in his brief the hardship that [REDACTED] had experienced in Somalia and asserted that relocating to that country would constitute extreme hardship for her. However, there is no indication in the record that the applicant has relocated or would be required to relocate to Somalia, such that the possibility of his wife relocating there to be with him would have to be considered for the purposes of this waiver application.

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 spouse would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's spouse

will suffer as a result of separation from the applicant. However, based on the record, the AAO cannot conclude that the hardships she faces, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. "[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).

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under sections 212(h) and (i) of the Act. 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 sections 212(a)(2)(A) and (6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.