



U.S. Citizenship
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FILE:

Office: NEW YORK

Date:

MAY 27 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.

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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 29, 2004.

On appeal, counsel contends that the district director failed to fully consider all of the evidence and submits affidavits from the applicant's wife and step-son.

The record contains, *inter alia*: two affidavits from the applicant's wife, [REDACTED] a letter from [REDACTED] s son from a previous relationship; an affidavit from the applicant; conviction documents; letters from the applicant's and [REDACTED] employers; a letter from the couple's landlord; a copy of [REDACTED] naturalization certificate; copies of a phone bill, bank account statement, and other financial and tax documents; photos of the applicant and his family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) provides:

(1) 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. . . .

The record shows that the applicant admitted under oath that he entered the United States on May 13, 1992, using a passport in another person's name. *Affidavit of* [REDACTED] dated June 9, 2001. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for entering the United States through fraud.¹

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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).

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 under the Act. These 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

[REDACTED] states that she has a son from a previous relationship and that the applicant is the only father her son has ever known. [REDACTED] states that because her son was fatherless for most of his life, he "suffered psychiatric injuries as a result." She claims the applicant takes her son to school and ball games, confers with her son's teachers, and "is a true father to [her] son." Ms. [REDACTED] states that if the applicant departed the United States, her son would be abandoned for the second time in his life, which she fears will cause him "grave psychiatric and social problems." In addition, [REDACTED] contends she receives "care and consideration" from the applicant, whom she met shortly after she left her previously abusive relationship. She states the applicant's presence is extremely important to her survival. *Affidavit of* [REDACTED], dated November 22, 2004.

son's letter states that he loves and respects his father who always teaches him new things and never yells or screams at him. son also stated that the applicant is nice,

¹ The record also indicates that the applicant has a history of arrests and convictions, including a 1997 conviction in the State of New York, Yonkers City Court, Criminal Division for possessing a forged instrument while using the name [REDACTED]. As such, the AAO notes that the applicant may also be inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude.

calm, and gives him a lot of love. He states he has already lost a father and does not want to lose another one. *Letter from* [REDACTED], undated.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However, there is insufficient evidence in the record to show that the level of hardship rises to the level of extreme hardship. Significantly, [REDACTED] does not discuss the possibility of moving back to Guyana, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. Their situation, if [REDACTED] remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See also Perez v. INS, supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

In addition, the AAO notes that although the record contains ample tax records and financial documents, [REDACTED], who earns \$24,000 annually as a travel consultant, does not make a financial hardship claim. *Affidavit of* [REDACTED], *supra*; *Letter from* [REDACTED], dated September 7, 2005. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

To the extent [REDACTED] claims that her son has "psychiatric injuries," there is no evidence in the record to substantiate her claim, such as a letter from a physician, counselor, or therapist. As such, there is no evidence describing the diagnosis, treatment, prognosis, or severity of [REDACTED] son's psychiatric problems, if any. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(a)(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.