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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NJ

Date:

OCT 01 2009

IN RE:

[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 District Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sri Lanka 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States 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 in the United States with his spouse and their U.S. child.¹

The District Director 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 District Director*, dated February 28, 2007.

On appeal, counsel for the applicant contends that the applicant's qualifying relatives will suffer economic and emotional calamity if his waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office; Attorney's brief*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant; a statement from the applicant's spouse; a medical statement for the applicant's spouse; a statement from a friend; an employment letter for the applicant; a police clearance letter for the applicant; tax statements for the applicant and his spouse; a utility bill; bank statements; a lease agreement; W-2 Forms and earning statements for the applicant and his spouse; and country conditions reports and media articles. 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

¹ The AAO notes that, at the time of appeal, the applicant's spouse was pregnant with their second child.

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 on June 25, 1998 the applicant attempted to procure admission into the United States through the Visa Waiver Pilot Program by presenting a false Austrian passport at the airport in Newark, New Jersey. *Memorandum to File, United States Department of Justice, Immigration and Naturalization Service, Newark International Airport, Newark, New Jersey*, dated June 26, 1998; *Record of Sworn Statement*, dated June 26, 1998. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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 or his child would experience if the applicant's waiver request is denied 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 the 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 a 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 Sri Lanka 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 adjudication of this case.

If the applicant's spouse joins the applicant in Sri Lanka, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Sri Lanka. *Form G-325, Biographic Information, for the applicant's spouse*. Her parents reside in the United States. *Id.* The record does not address what family members she may have in Sri Lanka. The AAO notes that the applicant was granted asylum in the United States from Sri Lanka. *Order of the Immigration Judge, Immigration Court*, dated October 13, 1998. Counsel for the applicant notes that many countries have issued travel advisories urging their citizens not to travel to Sri Lanka. *Attorney's brief*. As of June 26, 2009, the United States Department of State issued a travel warning to United States

citizens traveling to or living in Sri Lanka about the potential for continued instability, including possible terrorist attacks. *Travel Warning, United States Department of State*, dated June 26, 2009. American citizens of Sri Lankan origin may be subject to additional scrutiny upon arrival and while in the country. *Id.* In some cases, foreigners of Sri Lankan origin may be detained without their embassy being notified. *Id.* When looking at the aforementioned factors, particularly the granting of asylum to the applicant and the current travel warning to Sri Lanka, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Sri Lanka.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Sri Lanka. *Form G-325, Biographic Information, for the applicant's spouse.* Her parents reside in the United States. *Id.* The applicant's spouse states that the applicant is the sole breadwinner of the family and that they do not have any other sources of income. *Statement from the applicant's spouse*, dated March 6, 2007. [REDACTED] a friend of the applicant, notes that the applicant's spouse is pregnant and would find it difficult to survive without the applicant. *Statement from [REDACTED]*, dated March 21, 2007. He further states that the applicant is the only source of income for his household and that the applicant's spouse would have to begin working after the birth of her second child as a result of losing the applicant's income. *Id.* The AAO notes that while the record includes documentation in the form of country conditions reports and media articles regarding the human rights situation in Sri Lanka, the record fails to include documentation addressing the economic situation and employment opportunities in Sri Lanka. There is nothing in the record to show that the applicant, were he to be removed, would be unable to contribute to his family's financial well-being from a place other than the United States. Furthermore, the record does not demonstrate that the applicant's spouse would be unable to work after the birth of her second child. The AAO notes that the parents of the applicant's spouse reside in New Jersey, the same state as the applicant's spouse. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not establish that the parents of the applicant's spouse would be unable or unwilling to assist her with childcare.

The applicant states that if he is removed to Sri Lanka, his family will be deprived of the love of a father and a husband. *Statement from the applicant*, dated March 6, 2007. The AAO acknowledges the difficulties that would be faced by the applicant's spouse if she were separated from the applicant. However, U.S. court decisions have repeatedly 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, *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. 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. *Hassan v. INS, supra*, held further 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record

does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(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 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.