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U.S. Citizenship
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FILE: Office: NEW ORLEANS (FORT SMITH, AR) Date: **SEP 02 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 PETITIONER:



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, 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 Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 having procured a visa through fraud or misrepresentation of a material fact. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated April 5, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in failing to consider all of the evidence submitted with the waiver application and referred only to the declaration submitted by the applicant in its decision. Specifically, counsel states that evidence on the record established that several factors, including health problems, loss of the applicant’s income, inability to pursue her education, loss of their home in Georgia, and the close relationship between the applicant and his wife’s three children, would all contribute to the extreme hardship the applicant’s wife would suffer if the applicant were removed from the United States. *See Notice of Appeal to the AAO* (Form I-290B). Counsel further contends that USCIS erred in failing to consider all of the factors that would result in hardship to the applicant’s wife in the aggregate. *Id.* In support of the waiver application and appeal, counsel submitted declarations from the applicant and his wife, declarations from the applicant’s parents, medical records for the applicant’s wife, information on medical and psychiatric care in Romania, documentation related to the home owned by the applicant, a university transcript for the applicant, and medical records for the applicant’s father-in-law. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act 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 Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Romania who was admitted to the United States as an F-1 student on September 27, 1999. A subsequent investigation revealed that the applicant had presented a fraudulent Certificate of Eligibility for Nonimmigrant Student Status (Form I-20) from Georgetown University to obtain the student visa and that he was never accepted at and never attended that university. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and admission to the United States through fraud and misrepresentation. The applicant's wife is a thirty-three year-old native and citizen of the United States. The applicant currently resides in Hot Springs, Arkansas.

Counsel for the applicant asserts that his wife would suffer extreme hardship if she is separated from the applicant due to her **medical and psychiatric condition**. In support of this assertion counsel submitted a declaration from the applicant's wife and a psychiatric evaluation from [REDACTED]. The evaluation contains a diagnosis of Bipolar Disorder and states that the applicant's wife is "ruminating on suicide" as a result of the applicant's immigration situation. See *Evaluation from* [REDACTED] dated April 26, 2007. [REDACTED] further states that due to dysfunction in her family, the applicant's wife does not have other family member that could support her and supervise her care and health, and further states, "this separation stands to be a very dangerous move in regard to suicide risk." *Id.* The applicant's wife states in her declaration that the applicant is her

“motivation to fight with [her] mental condition” and is the only one who helps her with the difficulties she faces on a daily basis. *Declaration of* [REDACTED] dated April 23, 2007. She further states that she suffers from panic attacks and has also been diagnosed with bipolar disorder, which “requires medical treatment with pills, psychotherapy, and interaction with a support group.” *Declaration of* [REDACTED] She states that she would be unable to continue with these treatments if she relocated to Romania because she does not know the language, and also fears what would happen if she had to be hospitalized for her condition in Romania, in light of reports that the conditions are “deplorable” in Romanian psychiatric hospitals. *Declaration of* [REDACTED]

The applicant’s wife claims that the applicant helps her cope with her psychological condition on a daily basis and she would suffer hardship if she were separated from him. The AAO notes, however, that after the appeal was filed, the applicant’s wife was convicted of robbery with a firearm in Volusia County Florida. She is currently incarcerated in Florida and has an expected release date of February 27, 2014. The fact that the applicant’s wife is in prison and is not living with the applicant as a result of a felony conviction undermines the assertion that she relies on him for daily emotional support. Further, since the applicant’s wife has recently begun serving a five-year prison sentence, she would be unable to relocate to Romania with the applicant if he were removed from the United States. The AAO therefore finds that the applicant has not established that his wife would suffer extreme hardship as asserted in the waiver application and appeal.

The evidence on the record is insufficient to establish that any hardship the applicant’s wife would experience if the applicant is denied admission to the United States is other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.