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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE:

Office: BALTIMORE, MD

Date: SEP 04 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 black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nepal 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 fraud or willful misrepresentation. The applicant is married to a 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 children in the United States.

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. *Decision of the District Director*, dated May 31, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED], indicating they married on September 17, 2001; a letter from the applicant; two letters from [REDACTED] a clinical assessment from a social worker; a letter from a psychologist; several letters of support; letters from the couple's employers; copies of tax and other financial documents; a copy of the U.S. Department of State Country Reports on Human Rights Practices for Nepal; 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 district director found that the applicant fraudulently filed for asylum and obtained work authorization based on that fraud. Significantly, counsel does not contest that the applicant fraudulently filed for asylum and obtained work authorization as a result. Rather, counsel asserts

that the asylum application was withdrawn and that the work permit was never used to obtain an immigration benefit. As the AAO stated in its previous decision in this case, “[the applicant’s] withdrawal of that application eleven years later does not change the fact that the applicant obtained a benefit through his misrepresentation.” *Decision of the AAO*, dated August 8, 2006. Specifically, the applicant filed a fraudulent asylum application and by so doing, attempted to obtain asylum and, indeed, obtained work authorization, both benefits under the Act. That the applicant did not use the work authorization to obtain work is irrelevant as he “by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured). . . [a] benefit provided under this Act.” Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Therefore, the applicant is 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)(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).

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. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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. The BIA has held:

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). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987)

(“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the record shows that the applicant filed his first waiver application on January 20, 2004. In that application, the applicant’s wife, [REDACTED] submitted a letter that stated that she wanted to raise her daughter in the United States and that Nepal was “one of the poorest countr[ies] in the world and one of the worse and violent political situation [sic].” *Letter from [REDACTED]* dated January 19, 2004. A letter from a psychologist in the record stated that [REDACTED] “was the only Hispanic student” in her high school and that while in high school, “[h]er mother, sister and little niece were killed in a house fire in which there was some suspicion of arson.” *Letter from [REDACTED]* dated January 16, 2004. The psychologist stated that Ms. [REDACTED] reported difficulty with sleeping and eating, feeling very sad, “feeling on the edge of crying,” and a loss of interest in social interactions. *Id.* The psychologist concluded that “[g]iven [REDACTED] history with trauma in the loss of family members, it is quite easy to see how she would be threatened [b]y moving to a foreign country in which she would probably and quite literally be the only Hispanic once again. . . . [S]he meet[s] the criteria for Dysthymic disorder (DSM-IV 300.4).” *Id.* Based primarily on this information, the district director denied the waiver application, a decision upheld by the AAO, for failing to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated July 29, 2004; *Decision of the AAO*, dated August 8, 2006.

The instant appeal is from the applicant’s second waiver application, which was filed on September 22, 2006. In support of this second application, the applicant submitted a “clinical assessment” letter from a social worker. The social worker’s letter stated that he met with the entire [REDACTED] family, including the applicant, [REDACTED] and the couple’s two children, who were seven years old and five months old at the time. The social worker’s letter stated that [REDACTED] “suffers fr[om] acute depression, **anxiety separation** and episodes of uncontrollable crying.” The social worker further states that “[REDACTED] ability to maintain any degree of emotional stability without the presence of her husband is unimaginable,” to the extent that she could be “severely impair[ed in] her ability to care for her children and carry out her and their activities of daily living.” The social worker also states that the applicant has an adjustment disorder, is emotionally fragile, and “would become at risk for suicidal behavior if faced with deportation.” The social worker concluded that Nepal has “become an increasing hostile environment[, and that f]or the [REDACTED] to return to Nepal would place them at eminent risk [sic]. [REDACTED] would be unable to maintain a lifestyle void violence [sic] perpetuated by other finding her self and family to be a target because of her religious beliefs [sic]. . . . Our recommendation is that the family receives on-going therapy to address their psychological needs.” *Letter from [REDACTED]*, dated October 20, 2006.

The district director found that the record contained no evidence of financial hardship to a qualifying relative, nor had the applicant claimed any. In addition, the district director found that the record contained no evidence of expected religious persecution should the applicant return to Nepal. With respect to the social worker's letter, the district director stated that the letter "appears to be a veiled attempt to address each deficiency delineated by the AAO in its appeal dismissal." The district director found that the social worker's conclusions that [REDACTED] would be unable to remain emotional stable without her husband, and that the political conditions in Nepal would put the applicant in imminent danger were unsupported by any documentation in the record. Furthermore, the district director noted that the credentials for the psychologist and social worker were not in the record and that the social worker's letter was "littered with grammatical and spelling errors." The district director found that a letter from [REDACTED] high school guidance counselor contradicted the letters from the psychologist and social worker, and concluded that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal to the AAO, the applicant has submitted additional evidence. The applicant and Ms. [REDACTED] have submitted new statements, a copy of [REDACTED] prescription for an anti-anxiety drug, and recent background information regarding the political situation in Nepal. In addition, counsel contends [REDACTED] would suffer extreme financial hardship as the family is a two-income household.

In the applicant's statement, he states that it would be very dangerous for his wife and their two daughters to move to Nepal given the political situation there. He further states that his wife's OB/GYN has diagnosed his wife with depression and prescribed an anti-depression medication for her. He claims that the medication is unavailable in Nepal and that there are no medical facilities in Nepal that could treat her. In addition, the applicant claims that he and his wife both work very hard to maintain their household. He contends that it would be impossible for his wife to survive on her income alone and that they have over \$25,000 in bills. *Letter from [REDACTED]*, dated June 22, 2007.

[REDACTED] letter states that she loves her husband very much and that it would be extreme hardship to be forced to separate from each other. [REDACTED] states that without her husband, she "will not be able to make it" financially, as he manages all of the finances and both of their incomes are needed to pay the bills. She states she would fear for her and her children's life in Nepal and that the political situation there is dangerous because of "terrorists called MAOIST." Furthermore, [REDACTED] states that she was in the house fire that killed her mother, sister, and niece in April 1996, and that she still has nightmares about it, but that her husband helped support her during the toughest time of her life. With respect to the psychologist's letter, [REDACTED] states that she was unable to receive counseling or treatment because her medical insurance did not cover any treatments and that the "best treatment that [she] can have is [her] husband." Ms. [REDACTED] states that her OB/GYN prescribed her an anti-depressant, but again states that "[her] husband is the best drug that any doctor can prescribe for [her]." *Letter from [REDACTED]*, dated June 22, 2007.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

The AAO finds that [REDACTED] would suffer extreme financial hardship if her husband's waiver application were denied. The record shows that since the applicant and his wife married in 2001, they have both worked in order to contribute to their household expenses. Documents contained in the record confirm that [REDACTED]'s salary alone would not cover living expenses for herself and her two U.S. citizen daughters. Based on [REDACTED] salary, the family's expenses, and the family's debt, the AAO concludes that [REDACTED] would suffer extreme financial hardship if the applicant's waiver application were denied.

The AAO notes that with respect to the letters from the psychologist and social worker, although the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. As such, the conclusions reached by the psychologist and the social worker do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's and the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Nonetheless, the AAO concludes that the combination of the financial hardship and emotional distress rise to the level of extreme hardship if [REDACTED] were to remain in the United States without her husband.

The AAO also finds that it would constitute extreme hardship for [REDACTED] to go to Nepal to avoid the hardship of separation from her husband. The record contains a Travel Warning by the U.S. Department of State dated May 7, 2007, and information from the U.S. Embassy in Nepal, dated March 9, 2007. According to these documents, the U.S. government "continues to be concerned about the security situation in Nepal and urges American citizens in Nepal to exercise special caution and maintain a low profile." On May 22, 2009 the Department of State issued a new Travel Warning for Nepal which confirms the continued dangerous conditions for U.S. citizens in Nepal. Based on these country conditions, the AAO finds that [REDACTED] would suffer extreme hardship if she were to move to Nepal with her husband. In sum, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors 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 includes the applicant's filing of a fraudulent asylum application and obtaining a work authorization card as a result, and periods of unauthorized presence. The

favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant's wife if he were refused admission; the letters of support in the record; the applicant's record of volunteer work for the Red Cross; the applicant's history of employment and paying taxes in the United States; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violation is 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.