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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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FILE: [redacted] Office: ACCRA, GHANA Date: SEP 21 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge (AOIC) denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a German-born citizen of Nigeria, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application. On appeal the applicant's husband provided additional evidence and argued that the evidence demonstrates that he would suffer extreme hardship if the waiver application is not approved. Although the applicant's husband did not address the basis of the director's determination of the applicant's inadmissibility, the AAO will review that determination.

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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the Board of Immigration Appeals stated that a misrepresentation is material if the applicant is excludable based upon the true facts, or if the misrepresentation shut off a line of inquiry relevant to the alien's eligibility, which line of inquiry might well have resulted in a proper determination that the alien should be excluded.

The record contains a Form DS-156 Nonimmigrant Visa Application that the applicant signed on January 17, 2003 and submitted to USCIS. In that application, the applicant stated that she was married to [redacted] and had a child named [redacted], born on October 19, 2002. She stated that her husband was paying for her trip to the United States.

A Form 129F, Petition for Alien Fiancée, in the record, which the applicant's husband signed on August 18, 2003, states that the applicant had never been married and had no children. A birth certificate in the record indicates [redacted] is not the applicant's married name, but, rather, that the applicant was born [redacted] in Hamburg, Germany on September 16, 1972.

In the decision denying the waiver application, the AOIC stated that the applicant admitted, in an interview, that she provided the false information in 2003 because she thought that it would demonstrate that she had ties to Nigeria and that she would, therefore, be granted a nonimmigrant visa.

The record does not contain the text of the applicant's interview, and no indication of its content other than the statement in the decision of denial. The AAO notes, however, that a consular officer has discretion in determining whether or not a nonimmigrant visa should be granted, and ties to the alien's home country are properly considered in determining if the alien has the requisite nonimmigrant intent. The applicant's misrepresentations were, therefore, material to the decision to be made on her nonimmigrant visa. The AAO finds that the applicant knowingly misrepresented material facts to gain entry into the United States and is inadmissible under section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> 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 . . . .

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Although birth certificates in the record indicate that the applicant has two U.S. citizen stepchildren, no hardship to them has been alleged and only hardship to the applicant's husband will be considered.[1] If extreme hardship to a qualifying relative, in this case, the applicant's husband, is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 set forth a nonexclusive list of 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, 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,

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[1] In his December 16, 2005 declaration, the applicant's husband indicated that he does not have custody of those children.

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).

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 record contains various documents sufficient to show that the applicant's husband suffers from various eye diseases and is legally blind.

In a letter dated December 16, 2005 the applicant's husband stated that, because of his blindness, he is unable perform many household chores. He stated that this is frustrating to him and that it is embarrassing having a friend perform his chores for him. He also stated that he is unable to drive and is dependent on MetroAccess, a supplemental public transportation service in the Washington, D.C. area, and that when it fails or is late he is obliged to ask friends to give him a ride. He stated that he wants his wife to assist him in these matters.

The applicant's husband also stated that he has been depressed and implied that meeting the applicant has either assuaged that condition or he believes that it will when they are together. The applicant's husband provided no corroborating documentation pertinent to his claimed depression.

The applicant's husband provided five letters from coworkers, friends, and acquaintances who stated that they help him with transportation, shopping, and household chores.

The applicant's husband provided no evidence that failure to approve the waiver application will cause him any medical or financial hardship. The only hardship assertions pertain to the applicant's husband requiring the applicant's help with transportation and household chores, and the emotional satisfaction he expects to derive from her presence, which he indicates has alleviated or will alleviate his depression.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

Absent any evidence from medical professionals pertinent to the applicant's husband's alleged depression, the AAO is unable to determine the seriousness of that depression or even to determine its existence. The evidence submitted is insufficient to show that failure to approve the waiver petition will cause the applicant's husband mental and emotional hardship to the applicant's husband which, when considered with all other hardship factors in this case, rises to the level of extreme hardship.

The AAO recognizes that, given the applicant's husband's circumstances, failure to grant the waiver application will cause him some continued hardship. To have the applicant here to help him with transportation and household chores would certainly be helpful and gratifying.

The record shows, however, that the applicant's husband has at least five coworkers, friends, and acquaintances who help him with his logistical difficulties, in addition to an auxiliary public transportation service available to those unable to use ordinary public transportation. Although the applicant's husband stated that he is embarrassed by having to accept assistance of those other than his wife, that embarrassment is not a hardship which, when considered with the other hardship factors in this matter, rises to the level of extreme hardship. The record does not demonstrate that, if the waiver application is not approved, the applicant's husband will suffer hardship based on his difficulties with transportation, shopping, and household chores which, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is found inadmissible and prevented from entering the United States.

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U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *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). "[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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.