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U.S. Citizenship
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Services



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FILE:



Office: INDIANAPOLIS, IN

Date: **SEP 25 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 Field Office Director, Indianapolis, Indiana, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse and child are U.S. citizens, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 3, dated July 26, 2007.

On appeal, counsel asserts that the field office director failed to consider the hardship to the applicant's spouse, and undue weight should not be placed on the applicant's conduct in light of the extreme hardship to her spouse. *Brief in Support of Appeal*, at 2, 4, dated August 24, 2007.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant, the applicant's spouse's statements and academic credentials, the applicant's statements and country conditions information. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant stated on her F-1 student visa application, dated June 15, 1999, that she did not have a lawful permanent resident fiancé in the United States, but the record indicates that she had a lawful permanent resident fiancé at that time, whom she married on June 25, 1999. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for her misrepresentation on her visa application.¹

The AAO also finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act based on her August 2, 2003 entry to the United States followed by her August 7, 2003 filing of Form I-485, Application to Register Permanent Resident or Adjust Status. The Department of State Foreign Affairs Manual (FAM) states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to an immigration officer when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants...apply for adjustment of status to permanent resident..." *DOS Foreign*

¹ The AAO notes counsel's statement that the applicant "committed visa fraud in 1999 when she misrepresented that she planned to be married a few days later." *Brief in Support of Appeal*, at 4.

Affairs Manual, § 40.63 N4.7(a)(2). Although the AAO is not bound by the FAM, it finds the Department of State's analysis in this situation to be persuasive.

The FAM states, "If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-2. In that the applicant sought admission to the United States as student on August 2, 2003 and filed for adjustment of status on August 7, 2003, the AAO finds that the applicant willfully misrepresented a material fact at the time of her August 2, 2003 admission to the United States, and for that reason as well is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a 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 on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or her child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Sri Lanka or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Sri Lanka. The applicant states that it took seven years for her and her spouse to have a child; she gave up her job to raise her son, he is extremely attached to her and leaving him would not be an option; Sri Lanka has an ongoing civil war due to a separatist terrorist group, his life would be in harms way, schools are threatened with bombing, and everything in his life would be at a lower level in Sri Lanka; and her spouse's type of work would not allow him to migrate to a new country. *Applicant's Statement*, at 1-2, undated. The applicant's spouse states that he and the applicant do not want to raise their child in a country where people suffer due to an extremist terrorist group demanding a separate homeland. *Applicant's Spouse's First Statement*, at 2, undated. The record includes a Department of State Travel Warning for Sri Lanka, dated April 5, 2007, which details the serious security issues in Sri Lanka. The AAO notes that the Travel Warning remains in effect as of September 15, 2009

The applicant's spouse states that he is a tenured professor at Purdue University, he has established two laboratories that improve industrial energy efficiency, he was selected for lifetime award by the Association of Energy Engineers, he developed the curriculum and concept for the first energy efficiency course at Purdue University, he works 65 to 70 hours a week, and he travels to international conferences on average four times a year. *Applicant's Spouse's Second Statement*, at 1, dated August 13, 2007. The applicant's spouse states that his work cannot be continued in Sri Lanka. *Applicant's Spouse's First Statement*, at 2. The record includes the applicant's spouse's extensive resume and letters from the Dean of the Purdue College of Technology and the Purdue University Electrical and Computer Engineering Technology Department Head detailing the applicant's spouse's professional endeavors. The dean indicates that the applicant's spouse would not be able to continue his scholarship and research in as effective manner if he left the United States. *Letter from Dean of the Purdue College of Technology*, dated March 8, 2007.

Considering the Sri Lankan security issues documented by the record and the impact of relocation on his career, the AAO finds that the applicant's spouse would experience extreme hardship if he relocated to Sri Lanka.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse is suffering from sleep disorders and anxiety, and that separation from his family would worsen his symptoms. *Brief in Support of Appeal*, at 3. The record does not include evidence that the applicant's spouse is suffering from sleep disorders and anxiety, and that separation from his family would worsen his symptoms. The AAO notes counsel's claim that denying the waiver would undermine the

applicant's spouse's contributions and deprive the field of his talents. *Supra*, at 2. The applicant states that her son could not survive forced separation; it would not be practical to leave her son with her spouse, her spouse works long hours and he travels a lot; they do not have extended family to care for their child; she and her spouse believe their son should grow up in a two parent family, two of her spouse's brothers left the country for work and the end result was disastrous for both families; the emotional hardship would be enormous on her and her family; she and her spouse are very close and depend on each other for everything; her spouse would not be able to travel to Sri Lanka often; and she and her spouse are awake countless hours in the night thinking about what will happen to their family and the future of their fifteen-month-old son. *Applicant's Statement*, at 1-2.

The applicant's spouse states that his family is the most important part of his life; he relies on the applicant for maintaining their home, cooking, caring for their child and for support; they have no relatives in the United States; he had a conference canceled due to terrorist bombings in Sri Lanka and he fears for his family's safety there; he and the applicant have sought treatment from a psychological counselor, he has sleepless nights and has been unable to concentrate at work; he is under constant pressure to produce and develop alternative energy for the United States and the worldwide community, and his family imbalance is impeding his mental abilities; his son would be raised without him in his life, he would grow up with the pain of an absent father in his life, he would be exposed to terrorist threats, the hardship he would face would be traumatic, and all of this adds to his fears and anxiety for his family. *Applicant's Spouse's Second Statement*, at 1-2, August 13, 2007. The record includes a psychological evaluation of the applicant, which reflects that she is experiencing significant emotional distress and depression at the present time and her emotional functioning would return to a non-depressed state if her inadmissibility is resolved and she can remain with her family. *Psychological Evaluation*, at 3, dated August 7, 2007. The AAO notes, however, that the applicant is not a qualifying relative for the purposes of this proceeding and the evaluation does not reflect how the applicant's spouse, the only qualifying relative, is being affected by the applicant's emotional hardship. The record does not include sufficient evidence of emotional, financial, medical or any other type of hardship that, in the aggregate, establishes that the applicant's spouse would experience extreme hardship if he remained in the United States.

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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.