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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ROME

Date: **JAN 14 2010**

IN RE: Applicant:



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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a combined motion to reopen and reconsider. The motion will be granted, and the prior decisions will be affirmed. The waiver application is denied.

The record reflects that the applicant, a native and citizen of Egypt, 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 applying for, and utilizing, a K-1 fiancée visa to procure entry to the United States, while still married to another person. The applicant 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 U.S. citizen spouse.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 31, 2005.

On appeal, the AAO concurred with the district director that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, and moreover, determined that extreme hardship to a qualifying relative had not been established, as required by section 212(i) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated December 14, 2007.

Counsel for the applicant has filed a combined motion to reopen and reconsider, requesting reconsideration with respect to the issue of whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation. In addition counsel asserts that extreme hardship to a qualifying relative has been established. In support of the instant motion, counsel for the applicant has submitted a memorandum and referenced exhibits. In addition, the applicant's spouse sent a supplemental statement, dated December 19, 2009. 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 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 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...

With respect to the district director's finding, and subsequent concurrence by the AAO, that the applicant is inadmissible under section 212(a)(6)(C) of the Act, for having procured numerous immigration benefits, including a nonimmigrant visa and subsequent entry to the United States, by providing false information, counsel contends that the applicant did not understand the contents of the documents he signed and did not intend to defraud the government. Counsel further notes that the U.S. Consulate in Cairo sent an email to the applicant's spouse, in June 2003, stating that the record had been purged¹ and as such, questions the AAO's concurrence with the district director that the applicant is inadmissible under section 212(a)(6)(C) of the Act, as the AAO's ability to analyze the documentation in question to conclude whether section 212(a)(6)(C) applies "conflicts with the 2003 consular statement that the fiancé visa file was purged...." *Memorandum in Support of Motion*, dated January 11, 2008.

To begin, the AAO notes that although the U.S. Embassy in Cairo may have purged the record, as noted in their email to the applicant's spouse in June 2003, the U.S. Citizenship and Immigration Services (USCIS) is in possession of the physical record which contains all documentation with respect to the Form I-129F, Petition for Alien Fiancé(e), filed by [REDACTED] on behalf of the applicant in 1997. Based on a thorough review of the record, and as further discussed in detail below, it has not been established by a preponderance of the evidence that the applicant is not subject to inadmissibility under section 212(a)(6)(C) of the Act, for having obtained numerous immigration benefits by fraud and/or willful misrepresentation.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

¹The email from the Cairo Consular Staff states:

Please note that you did have a pending fiancé case, but now it is purged. You have to file again, if you want, and it is up to the officer to decide upon your case.

Email from Cairo Consular Staff to [REDACTED] [the applicant's spouse], dated June 26, 2003.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As the record indicates, the applicant signed the Optional Form 156K on March 17, 1997, and on said form, certified that he was “legally free to marry and intend to marry [REDACTED] a United States citizen, within 90 days of my admission to the United States....” *See Optional Form 156K*, dated March 17, 1997.

In addition, on the Optional Form 156, in response to question 18, Marital Status, the applicant indicated that he was single. On question 19, Names and Relationships of Persons Traveling with You, the applicant indicated “[REDACTED]-Fiancée”. Moreover, in response to question 28, What Is the Purpose of Your Trip, the applicant indicated “to marry.” Finally, on question 32, Are any of the following in the U.S., the applicant indicated “Fiance/Fiancee.” *See Optional Form 156*.

Furthermore, the applicant signed his name on the Form I-93, Visa Instructions for Fiancé(e), Nonimmigrant Visa Applicants, on March 17, 1997. *See Form I-93*, dated March 17, 1997. Finally, on the Form G-325A, Biographic Information, the applicant noted that he was not married. *See Form G-325A, Biographic Information*, dated January 1, 1997. The above responses indicate that the applicant was fully aware of the fact that he applied for a fiancée visa, with the intent to marry a U.S. citizen, specifically, [REDACTED], despite the fact that he was already married.

Counsel has failed to establish by a preponderance of the evidence that the applicant’s responses and signatures on the above-referenced forms were not deliberate and voluntary. Moreover, the applicant had the duty and the responsibility to review the forms (and obtain translations if any questions on the forms were not clear to him) prior to signing.² As such, the AAO reaffirms its concurrence with the district director that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of the bar to admission resulting from a 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. Hardship the applicant experiences is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s U.S. citizen spouse.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

² Counsel states that the applicant has some knowledge of spoken English, but does not read English. *Supra* at 3. Counsel’s assertion seems to be contradicted by letters and emails sent by him to the applicant’s spouse. Moreover, as noted above, even if the applicant were unable to read English, he had the duty and responsibility to review the forms (and obtain a translation if needed) prior to signing.

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.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience extreme hardship if she relocated to Egypt to reside with the applicant due to his inadmissibility. The AAO, in its decision dated December 14, 2007, found that the applicant's U.S. citizen spouse would encounter extreme hardship were she to relocate to Egypt to reside with the applicant due to the applicant's inadmissibility. As such, this criteria does not need to be re-addressed at this time.

The second step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would suffer extreme hardship if she remained in the United States while the applicant resides abroad due to his inadmissibility. The AAO, in its decision dated December 14, 2007, concluded that extreme hardship had not been established. With the instant motion, counsel submits additional documentation in support of the hardships the applicant's spouse would encounter were the applicant to remain abroad while the applicant resides in the United States.

On motion, the applicant's U.S. citizen spouse contends that she will suffer emotional, physical and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she asserts that she will suffer emotional hardship, for she needs her husband and has been under a great amount of stress due to his absence. She notes that it is hard for her to concentrate or focus at work and she is feeling depressed. She further contends that she is suffering physical hardship due to the applicant's inadmissibility, including chest pains, headaches and high blood pressure. Finally, the applicant's spouse asserts that she is experiencing financial hardship due to her spouse's inadmissibility and is thus unable to travel to Egypt to visit the applicant regularly; she states that she is living at home with her parents to save money. *Letter from* [REDACTED] dated December 19, 2009.

In support of the emotional hardship referenced by the applicant's spouse, an affidavit has been provided by [REDACTED] [REDACTED] states that the applicant's spouse is suffering from clinical symptoms of depression and anxiety based on her spouse's long-term absence. He concludes that were the applicant unable to reside in the United States, his spouse's symptoms will become heightened, "to the degree that she will sink even further into her depression...." *Affidavit of* [REDACTED], dated January 9, 2008.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health

professional and the applicant's spouse or any treatment plan for the conditions referenced by [REDACTED] [REDACTED] to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. It has thus not been established that the applicant's spouse will experience extreme emotional hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

In support of the physical hardship referenced by the applicant's spouse, a radiology report and progress notes from July 2007, almost six months prior to the appeal submission, have been provided. The report and progress notes do not establish the current gravity of the situation, the short and long-term treatment plan and what specific hardships the applicant's spouse will endure due to the applicant's physical absence from the United States.

As for the financial hardship referenced above, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record establishes that the applicant's spouse has been gainfully employed, since November 2000, with [REDACTED]. See *Form G-325A, Biographic Information*, dated April 28, 2004. No documentation has been provided on appeal that outlines the applicant's spouse's current financial situation, including income, expenses, assets and liabilities, and her financial needs, to establish that without the applicant's presence in the United States, his spouse's financial hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant would be unable to find gainful employment in Egypt that would allow him to assist his spouse in the United States financially should the need arise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Finally, the record indicates that the applicant's spouse's

parents, three siblings and extended family members reside in the United States; it has not be established that they are unable to assist the applicant's spouse financially, should the need arise.

The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). 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. The AAO thus concludes that based on the documentation provided, the record fails to establish that the applicant's spouse's continued physical, emotional and financial survival directly correlate to the applicant's physical presence in the United States.

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.

ORDER: The motion is granted, and the prior decisions affirmed. The waiver application is denied.