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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

762

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FILE:



Office: SAN FRANCISCO, CA

Date:

DEC 17 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, Mr. [REDACTED] is a native and citizen of Italy 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 5, 2004.

The AAO will first address the finding of inadmissibility pursuant to 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.

The record reflects that the applicant entered the United States from 1997 to 2001 pursuant to a Q1 visa, a visa waiver, and a B-1 visa. *Form I-485, Application to Register Permanent Residence or Adjust Status*. The applicant's most recent entry to the United States in June 2001, and his entry in June or July 1999, were pursuant to the Visa Waiver Program, which requires completion of a form that asks whether the person is seeking to work in the United States. Although the applicant claimed on the form that he did not intend to engage in employment, the record reflects that he was in fact employed with North Beach Restaurant in June 1999 to August 1999, [REDACTED] from August 1999 to December 1999, North Beach Restaurant from December 1999 to January 2001, and [REDACTED] in July 2001. *Biographic Information, Form G-325; Document from Molinari Delicatessen*.

The AAO finds that the documentation in the record, and the applicant's admitting under oath in the adjustment of application status as to the misrepresentation, supports the finding that the applicant willfully misrepresented the material fact that he sought entry into the United States so as to live and obtain employment here. Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

A section 212(i) waiver of the bar to admission resulting from 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 to the applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's naturalized citizen wife. 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).

Counsel states that the extreme hardship under section 212(i) of the Act should not be defined as it is under section 212(h) of the Act. He states that a crime is treated differently from misrepresentation under section 237(a) of the Act, which counsel states provides a waiver for deportability based on misrepresentation. He states that criminal intent differs from misrepresentation, that the conduct waivable under section 212(i) of the Act is not as serious as the conduct under section 212(h) of the Act, and consequently, the hardship standard to be met should be lower.

The AAO finds counsel's assertion unpersuasive. Section 237(a) of the Act deals with aliens who have been admitted into the United States and are subject to removal for being within a class of deportable aliens. Although section 237(a) of the Act provides a waiver for misrepresentation and does not for a criminal offense, section 237(a) of the Act is distinct from and does not apply to section 212(a)(6)(C)(i) of the Act, which is the applicant's ground of inadmissibility, and the provisions of the Act do not indicate a distinction in extreme hardship in sections 212(h) and 212(i) of the Act.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains a psychological evaluation by Dr. [REDACTED]; an affidavit by Ms. [REDACTED]; a letter from Dr. [REDACTED]; wage statements; income tax records; employment letters; an affidavit by the applicant's wife; a letter from Mr. [REDACTED], Marriage, Family Therapist; financial statements; a marriage license; divorce decrees; photographs; a purchase order for a vehicle; documents relating to car insurance, health insurance, and a cell phone; and other documents.

In her affidavit, Ms. [REDACTED] states that she lived with the applicant since July 2000 and married him on September 15, 2001. She states that they have never been separated and have a close and loving relationship. She states that she had an unhappy childhood and two prior marriages. She indicates that her first husband had a drug problem and her second husband had bipolar disorder. Ms. [REDACTED] states that on account of her prior relationships she feels abandoned, isolated, and distrustful of men. However, she indicates that she trusts and feels secure with the applicant and that he has helped her deal with her past problems. She conveys that she feels depressed, apprehensive, is unmotivated, has lost her appetite, and has difficulty sleeping because of the waiver application denial. She states that she and her husband share household chores and that he cooks and shops for groceries. Ms. [REDACTED] indicates that she no longer drinks alcohol and smokes cigarettes and believes she would resume these habits without the applicant's presence. She states that she wants to have children. Ms. [REDACTED] states that she is a sales assistant with Merrill, Lynch and earns \$42,000 annually as a base salary. The applicant, she states, earns \$2,500 each month as a clerk with [REDACTED]. She states that she benefits from the applicant's income as she is able to pay off debt and would resort to bankruptcy without his income. She states that she does not wish to live in Italy and that she has lived in the United States since childhood and that her parents and siblings live in the United States. She conveys that she lived in Italy in the past and was unhappy there and believes that she would have difficulty finding employment comparable to her present position.

The letter from Mr. [REDACTED] a licensed marriage and family therapist with [REDACTED] states that Ms. [REDACTED] mental health will have a severe negative impact in the event her husband's waiver application were denied. Mr. [REDACTED] describes Ms. [REDACTED] childhood and her marriages. He states that immediately after Ms. [REDACTED] second marriage she moved in with her parents for six months and had Major Depressive Disorder (DSM IV-296.23). Mr. [REDACTED] states that Ms. [REDACTED] would be devastated and would be an emotional wreck, and would have debilitating depression if separated from the applicant, who Mr. [REDACTED] states is her support system. He indicates that Ms. [REDACTED] does not want to move back to Italy since she has a good job as a sales assistant in a brokerage firm. Mr. [REDACTED] states that Ms. [REDACTED] likes San Francisco and felt isolated with no family or friends in Italy, where she was looked upon as a domestic worker.

The report dated April 22, 2004 from Dr. [REDACTED] describes Ms. [REDACTED] childhood, sexual abuse, adolescence and suicide attempt, marriages, education, employment, depression in 1993 and therapy, relocation to San Francisco in 1994, move to Italy in 1995 along with her husband, return to San Francisco, lack of social life, heart condition, relationship with her present husband, and teeth grinding and mouth biting. Dr. [REDACTED] describes his interview of the applicant and states that her husband is not aware of his wife's "psychiatric condition," that is, her "Major Depression" and "very severe psychiatric disturbance." Dr. [REDACTED] states that Ms. [REDACTED] is suffering from Major Depressive Disorder in Partial Remission (DSM-IV 296.25, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, the American Psychiatric Association). He states that Ms. [REDACTED] is pathologically dependent on her husband and is prone to severe clinical depression including suicidal ideation. He indicates that she is not receiving treatment for her psychiatric disturbances, Major Depressive Disorder in Partial Remission (DSM-IV 296.25) and Dependent

Personality Disorder (DSM-IV 301.6). Dr. [REDACTED] states that since Ms. [REDACTED] will deliver her first child in July and her husband may be deported, she needs professional mental health treatment including a medication evaluation. He indicates that the presence of the applicant and the birth of the child are positive developmental milestones for [REDACTED] states that Ms. [REDACTED] will experience extreme depression and will have a "downward spiral of severe psychological disability from which she might never emerge" and will have an increased risk of suicide if the applicant were deported. He states that people who have had an episode of major depression that was not quickly ended by medication, which he indicates is the case with Ms. [REDACTED] are at a much higher risk for further more serious episodes. He states that Ms. [REDACTED] pregnancy increases the need of support from her husband.

In the affidavit executed on April 29, 2004, Ms. [REDACTED] states that she is worried about not being able to pay her monthly expenses without the financial contribution of her husband. She indicates that she expects the birth of their child in July 2004.

The document from Pacific Gynecology and Obstetric Medical Group states that Ms. [REDACTED] delivery date is July 17, 2004.

The financial statement for April 4, 2004 shows monthly earnings of \$4,233 and monthly expenses of \$4,078 and the statement for March 6, 2002 shows monthly earnings of \$4,500 and monthly expenses of \$4,479. The most recent earnings statement in the record from [REDACTED] reflects a salary of \$746.88 for the pay period April 18, 2004 to April 24, 2004.

The April 27, 2004 letter from [REDACTED] M.D., states that Ms. [REDACTED] has been under his care since 2003 for a heart condition called mitral valve prolapse and that she is at risk of infection, which requires antibiotics before certain procedures and annual checkups to monitor her condition. He states that the deportation of the applicant "could potentially cause negative consequences if the sole caretaker of a child has a heart condition."

The record establishes that the applicant's wife would endure extreme hardship if she remained in the United States without him.

To establish extreme hardship to Ms. [REDACTED] the applicant submitted a letter from Mr. [REDACTED] and a report from Dr. [REDACTED]. The AAO finds that the report from Dr. [REDACTED] which describes the past of the applicant's wife, establishes that she would experience extreme hardship if separated from her husband.

The record is insufficient to establish that the applicant's wife would endure extreme hardship if she joined the applicant in Italy.

Ms. [REDACTED] indicates that in Italy she may have difficulty finding employment comparable to her sales assistant position with Merrill Lynch. Various U.S. court and BIA decisions that have shown that difficulties in obtaining employment and the general economic conditions in a foreign country are insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and

Matter of Kim, 15 I&N Dec. 88, 89 (BIA 1974) (economic opportunities in a foreign country that may be somewhat less than they are in the United States is not, by itself, sufficient to establish "extreme hardship").

If she joins her husband overseas, Ms. [REDACTED] states that she would have to leave her parents and siblings who live in the United States and the country where she has spent most of her life. The AAO recognizes that Ms. [REDACTED] adjustment to the culture and environment in the Italy would be difficult; but these difficulties would be mitigated by the moral support of her husband and his relatives, which are her family ties to Italy, and by the fact that Ms. [REDACTED] previously lived in Italy for several years.

Furthermore, courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Amezquita-Soto v. INS*, 708 F.2d 898, 902 (3d Cir.1983) (finding that neither petitioner nor his daughter would suffer extreme hardship if the petitioner were deported because the grandmother had raised and could care for the child); *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985) (affirming the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child").

Counsel states that the district director did not consider the cumulative effect of the hardship factors. In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship in the event the applicant remained in the country without her husband. However, the record fails to show that she would experience extreme hardship if she were to join the applicant in Italy. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.