

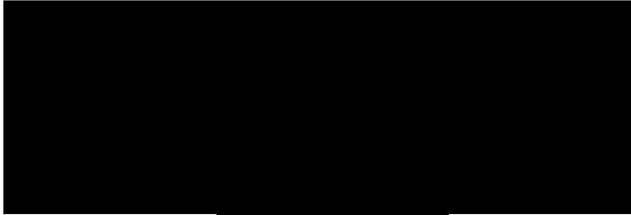
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LONDON, UNITED KINGDOM

Date: JUN 11 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) , § 1182(h) and § 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, 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 Officer in Charge (OIC) London, England. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom. He was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation; 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure; and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT). He is married to a U.S. citizen and has one U.S. citizen daughter. He seeks waivers of inadmissibility under sections 212(i), 8 U.S.C. § 1182(i); 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v); and 212(h) of the Act, 8 U.S.C. § 1182(h).

The OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on November 16, 2006.

On appeal, the applicant's spouse contends that she will suffer extreme hardship if the applicant is excluded from the United States whether she decides to remain in the United States or relocates with the applicant to the United Kingdom.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i)(1):

The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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

The AAO notes that the Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were “material” was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now U.S. Citizenship

and Immigration Services' (USCIS)) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The record establishes that the applicant applied for admission on October 4, 1996, and presented a fraudulently obtained Form I-94 to immigration inspectors to establish his admissibility. He was put into removal proceedings where an Immigration Judge ordered him excluded and deported pursuant to section 212(a)(7)(A)(i)(I) of the Act. The applicant was removed to the United Kingdom on October 7, 1996. The applicant changed his name from [REDACTED] to [REDACTED] obtained a new passport and reentered the United States on October 23, 1996, under the Visa Waiver Program. Based on his presentation of a fraudulent document to immigration officers on October 4, 1996, the applicant is admissible to the United States under section 212(a)(6)(C)(i) for having attempted to gain admission to the United States through fraud or material misrepresentation. In addition, his use of a new identity at the time of his October 23, 1996 admission to the United States constitutes a material misrepresentation as it precluded a line of inquiry that was relevant to his eligibility and that could well have resulted in his exclusion. For this reason as well, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record indicates that subsequent to his October 23, 1996 admission, the applicant departed and re-entered the United States several times. He entered the United States for the final time on March 17, 1998, and remained until he was removed on October 22, 2003. Therefore, the applicant was unlawfully present in the United States for over a year and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record establishes that the applicant pled guilty on January 5, 2001, to Conspiracy to Commit Wire and Mail Fraud, 18 U.S.C. § 371, and Money Laundering, 18 U.S.C. §1957, in the United States District Court in the Southern District of Florida, West Palm Division and was sentenced to 41 months imprisonment.

Moral turpitude attaches to any crime against property that involves "fraud" whether it entails fraud against the Government or an individual. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). The Board of Immigration Appeals has concluded that Money Laundering is categorically a Crime Involving Moral Turpitude. *In re Tejwani*, 24 I&N Dec. 97 (BIA 2007). As

such the applicant has been convicted of two Crimes Involving Moral Turpitude. The applicant does not contest these findings.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) or 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. Under section 212(h), a qualifying relative may also be an applicant's child. As sections 212(a)(9)(B)(v) and 212(i) of the Act are the more restrictive of the grounds of inadmissibility that apply to the applicant, he must establish extreme hardship to his spouse, rather than his U.S. citizen child. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Sections 212(a)(9)(B)(v) and 212(i) of the Act; *see also Matter of Mendez-Morales*, 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 list of non-exclusive factors relevant to determining whether an applicant 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, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains several statements from the applicant's spouse; statements from friends and family of the applicant and his spouse; printouts from the Internet concerning various medications and medical conditions related to the applicant's spouse's uncle; printouts from the Internet concerning the costs of airline tickets and housing in London, England; a psychological evaluation of the applicant's spouse; bank statements; a marriage license for the applicant and his spouse; a birth certificate for the applicant's daughter; court records and other documentation detailing the applicant's convictions; and photographs of the applicant and his family.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's spouse asserts that relocating to the United Kingdom with the applicant would impose an extreme hardship on her because she has lived in America all her life, she is close to her family, that her family is everything to her, she would have to sell her home at great financial loss and she would be unable to pay off her credit card debt. The applicant's spouse has also asserted that her ailing uncle depends on her extensively, that she would have to close her business in the United States, that she is unfamiliar with England and would not be able to get a job or health insurance there, that she has no family ties in England, and that moving her daughter to England away from her U.S. family would be devastating for her.

The AAO notes the applicant's spouse's claims that she would suffer financial hardship if she joined the applicant in England. However, the record does not support her assertions. Although the applicant's spouse states that the applicant is only able to support himself, the record offers no documentary evidence to establish that he would be unable to support his family if they relocated to England. No documentation of the applicant's employment, income or living expenses is included in the record. The AAO acknowledges the submitted Internet printouts on housing costs in London but finds them insufficiently probative to establish the cost of living in England. There is also no evidence that supports the applicant's spouse's assertion that she would be unable to obtain employment or health insurance in England, that relocation would require her to sell the home she co-owns with her parents at a significant financial loss or that she would have to close her business in the United States if she joined the applicant. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). The AAO notes that the record reflects that the applicant's spouse operates an online business and finds no evidence that establishes her business could not be run from outside the United States. Accordingly, the record does not demonstrate that the applicant's spouse would experience financial hardship if she relocated to England.

The applicant's spouse contends that relocating to England would pose an extreme emotional hardship for her as she has lived her entire life in the United States and her U.S. family is everything to her. She further asserts that she has a sick uncle who is dependent on her for his day-to-day needs, including help around the house, trips to the doctor and the pharmacy for his medications, and that, if she were to relocate to England, he would suffer hardship. The applicant's spouse's uncle has submitted a statement describing the help provided by his niece, and detailing his perceptions of the hardship he would endure if she were not present to help him. The applicant's spouse's uncle is not, however, a qualifying relative for the purposes of this proceeding and, as previously noted, hardship he might experience as a result of the applicant's inadmissibility is not relevant to a determination of extreme hardship except as it affects the applicant's spouse. While the applicant's spouse states that she would be emotionally devastated if she had to leave her uncle, particularly as his condition is worsening, the record does not document, e.g., a psychological evaluation of the applicant's spouse by a licensed health care professional, how their separation would affect her. *Id.* The record also contains no evidence in support of the applicant's spouse's claims that relocation to

England would be an extreme hardship for her because of her life-long residence in the United States and her close family ties.

Based on its consideration of the evidence presented to establish extreme hardship upon relocation, the AAO finds that the applicant has not demonstrated that his spouse would suffer extreme hardship if she joined him in England.

As noted above, extreme hardship to a qualifying relative must also be established if he or she remains in the United States. The applicant's spouse has asserted that the applicant's exclusion would be an unbearable pain for her and her daughter, that she has trouble concentrating, and that her daughter needs the applicant to have a complete family. Prior counsel for the applicant asserts that excluding the applicant has been an extreme hardship for the applicant's spouse and refers to an evaluation by psychologist [REDACTED]. In her evaluation, [REDACTED] reports that, in their interview, the applicant's spouse indicated that, while anxious about her situation, she did not feel that her anxiety was interfering a great deal with her ability to work, and did not experience any major difficulties in sleeping. Although [REDACTED] finds that the applicant's spouse's anxiety does not appear to be causing major difficulties that interfere with her ability to work, her role as a mother or her marriage, she notes there are signs that her attention and energy levels are affected. Dr.

concludes that the applicant's spouse appears to be more anxious than other individuals and meets the criteria for anxiety disorder "not otherwise specified." [REDACTED] concludes that excluding the applicant has the potential to increase the applicant's spouse's level of anxiety, which could in turn affect her ability to function occupationally and as a mother. While the input of any mental health professional is respected and valuable, the AAO finds the speculative nature of Dr.

conclusions and the fact that these conclusions are based on a single interview with the applicant's spouse to diminish the evaluation's value to a determination of extreme hardship.

Subsequent to the filing of the applicant's appeal, his spouse submitted a letter asserting that as a result of her financial burdens, the emotional toll of being a single parent, maintaining a home and business, caring for her uncle and the stress on her family, she feels as though her mental health is at stake. She describes severe headaches and panic attacks, and states that she has not consulted a doctor as she does not have health insurance. The applicant's spouse also states that her daughter is experiencing hardship as a result of her separation from her father.

While the AAO acknowledges the additional emotional hardship claimed by the applicant's spouse on behalf of herself and her daughter, it again notes that no documentary evidence has been submitted to support her assertions. Absent such documentation, the statements of the applicant's spouse are insufficient to establish the impacts of applicant's inadmissibility. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. The AAO also notes that the applicant's daughter is not a qualifying relative for the purposes of proceedings under sections 212(a)(9)(B)(v) and 212(i) of the Act and, therefore, that any hardship she may experience would be considered only to the extent that it affects her mother. The record does not document how the hardships being experienced by the applicant's daughter are affecting his spouse.

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 spouse would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility. However, in the present case, the record does not distinguish her hardship from that experienced by other individuals whose spouses have been found excludable from the United States. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO finds, therefore, that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) or 212(i) of the Act, the burden of proving eligibility rests 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.