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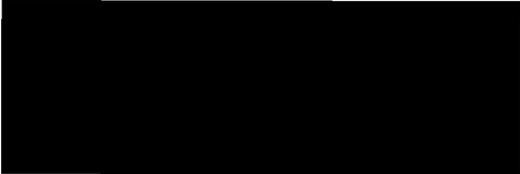
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H5



FILE: [REDACTED]

Office: PHILADELPHIA, PA

Date:

APR 02 2010

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 PETITIONER:



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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Italy who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated July 22, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant committed fraud when he entered the United States in 2000 because he used his own passport and did not conceal his identity and had no subjective intent to commit fraud. *See Notice of Appeal to the AAO (Form I-290B)*. Counsel further claims that USCIS erred in failing to consider the waiver application and ignoring compelling evidence of hardship presented. *Notice of Appeal to the AAO*. On appeal counsel requested 30 days in order to submit a brief and/or additional evidence. As of this date, no additional statement or evidence has been submitted, and the record is considered complete. In support of the waiver application, counsel submitted a letter from the applicant's wife's physician stating that she was pregnant, a copy of an ultrasound, copies of bills and a lease, and a letter from the applicant's employer. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he presented his own passport and was lawfully admitted under the Visa Waiver Program in February 2000. *See Brief in Support of Waiver Application*. Counsel further states that the applicant believed that when he was removed from the United States in August 1999 he had been granted "Voluntary Departure" and "[w]hen he was admitted without a problem in May of 2000, he assumed that the Service had resolved all issues concerning his prior situation." *Brief in Support of Waiver Application*.

The AAO notes that when applying for a visa, the burden of proving admissibility and eligibility for the visa remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Counsel contends that the applicant did not commit fraud because he used his own passport to enter the United States under the visa waiver program and was unaware he was barred from reentering the United States under this program. The record contains no statement from the applicant concerning his February 2000 entry and counsel does not address whether the applicant's failure to disclose his prior deportation when seeking admission under the visa waiver program constituted a material misrepresentation. In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) 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 a proper determination that he be excluded. *Id.* at 447.

The applicant was ordered deported on August 27, 1999 and found to have waived his right to contest any action for deportation pursuant to section 217 of the Act, 8 U.S.C. § 1187, because he had been admitted under the Visa Waiver Pilot Program in 1993. As noted by the District Director in the decision denying the waiver application, the applicant had to fill out a Form I-94W in order to apply for admission under the visa waiver program. Form I-94W specifically asks whether an applicant has ever been excluded or deported or previously removed from the United States and warns that if an applicant answers "yes" to this or any other question on the form, he may be refused admission to the United States and must contact the U.S. Embassy before traveling to the United States. Further, prior to his August 1999 removal, the applicant was provided with documents indicating that he was being ordered deported from the United States and warning him that he was barred from making an application for admission under the Visa Waiver Program and would need to obtain permission from USCIS before reentering the United States. The applicant's prior deportation rendered him inadmissible and ineligible for admission under the visa waiver program. His concealment of his August 1999 deportation, when he was excludable on the true facts, therefore constitutes a material misrepresentation, and the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Italy who has resided in the United States since February 2000 and who previously resided in the United States from May 1993 until he was removed in August 1999. The record further reflects that the applicant's wife is a thirty year-old native of Italy and citizen of the United States whom he married on May 22, 2000. The applicant and his wife reside in Whitehall, Pennsylvania.

Counsel asserts that the applicant's wife would suffer extreme emotional and financial hardship if the applicant is not admitted to the United States because she would be forced to raise the child they were expecting on her own. Counsel states that she would find it "extremely difficult to raise the child and support it if she is forced to work outside of the home, particularly since her husband will be unable to assist her." *Brief in Support of Waiver Application*. In support of this assertion counsel submitted a letter from the applicant's wife's physician stating that she is pregnant and a copy of an ultrasound. No documentation was submitted indicating that the applicant's wife would be unable to work and support herself. Further, there is no indication that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact caused by loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel states that the applicant's wife would suffer extreme emotional hardship if she were separated from the applicant and states that because his wife and child will be "deprived of his presence in their lives," they would suffer significant emotional burdens. *Brief in Support of Waiver Application*. Counsel further states,

It is highly likely that the legislature, in providing for a waiver to the unlawful presence bar, specifically envisioned the current situation as one which represented 'extreme hardship' to the extent that the primary goal of the immigration laws of this country is the reunification of family.

Counsel additionally states that the desire of his wife and then-unborn child to be in contact with their husband and father "carry significant weight." *Brief in Support of Waiver Application*. Counsel submitted no evidence concerning the potential emotional or psychological effects of separation from the applicant on his wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record fails to establish that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to Italy with the applicant because virtually all of her relatives are in the United States and she would find it difficult to find employment in Italy given the high rate of unemployment in Italy, particularly in the south where the applicant has his foreign residence. No documentation was submitted to support counsel's assertion that the applicant's wife would be unable to find employment in Italy. As noted above, the unsupported assertions of counsel do not constitute evidence. 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)).

There is no evidence on the record to establish that the applicant's wife would experience hardship beyond the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under sections 212(i) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.