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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: SANTA ANA Date: APR 23 2010

IN RE: Applicant: [redacted]

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:

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 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 Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Vietnam and citizen of France who was found to be inadmissible to the United States under 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 U.S. citizen wife and children.

The field office director concluded that the applicant 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*, dated June 1, 2007.

On appeal, the applicant asserts that his wife and children need his help financially and emotionally. *Statement from the Applicant on Appeal*, dated June 18, 2007.

The record contains statements from the applicant and his wife; a copy of the applicant's marriage certificate; copies of birth records for the applicant and his two children; copies of the applicant's and his wife's passports; tax, income, and employment documentation for the applicant and his wife, and; information regarding the applicant's misrepresentation of his intent when entering the United States pursuant to the Visa Waiver Program. The entire record was reviewed and considered in rendering this decision.

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

> 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, in pertinent part, 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[.]

The record reflects that the applicant resided with his wife in France prior to their marriage. *Statement from the Applicant's Wife*, dated June 20, 2007. The applicant's wife became pregnant, and she and the applicant decided that she would relocate to the United States to have their child so

that her family could assist her. *Id.* at 1. The applicant's wife explains that her family did not allow her to reside with them due to the fact that she was pregnant without being married. *Id.* On January 14, 2004 the applicant entered the United States pursuant to the Visa Waiver Program, with authorization to remain until April 13, 2004. He married his wife seven days later on January 21, 2004. The applicant filed a Form I-485 application to adjust his status to permanent resident on February 5, 2004. The applicant's first child was born on February 11, 2004.

Based on the foregoing, the field office director determined that the applicant misrepresented his intentions when he entered the United States pursuant to the Visa Waiver Program. Specifically, an individual is eligible to enter under the Visa Waiver Program only if he applies for admission as a nonimmigrant visitor for a period not to exceed 90 days. Section 217(a)(1) of the Act, 8 U.S.C. § 1187(a)(1). The fact that the applicant filed an application to adjust his status to lawful permanent resident 14 days after he entered the United States supports that he had an intention to immigrate when he applied for admission pursuant to the Visa Waiver Program. The applicant's wife was close to giving birth when the applicant entered, and the applicant and his wife were married within days of his entry.

Entry to the United States under the Visa Waiver Program requires an alien to meet the definition of a nonimmigrant visitor at section 101(a)(15)(B) of the Act. Section 217(a)(1) of the Act, 8 U.S.C. § 1187(a)(1). Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B), defines a nonimmigrant visitor as, in pertinent part, "an alien . . . having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." An intent to immigrate to the United States is inconsistent with the Act's definition of a nonimmigrant visitor. For that reason, USCIS has long considered entry into the United States as a nonimmigrant visitor with a preconceived intent to establish permanent residence to be a negative factor in discretionary determinations. *See Matter of Ibrahim*, 18 I&N Dec. 55, 57 (BIA 1981) (reaffirming *Matter of Garcia-Castillo*, 10 I&N Dec. 516 (BIA 1964)).

The AAO has examined the applicant's explanation of his intentions when he entered the United States, including his assertion that he made his decision to remain in the United States after he entered. However, given his known plan to marry a U.S. citizen upon entry and the rapidity with which he applied for lawful permanent residence, the record shows by a preponderance of the evidence that the applicant planned to seek lawful permanent residence at the time he represented that he intended to enter in a nonimmigrant status for a temporary period. Accordingly, the record supports that the applicant procured admission into the United States by making a willful misrepresentation, and he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

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).

On appeal, the applicant asserts that his wife and children need his help financially and emotionally. *Statement from the Applicant on Appeal* at 1. He indicates that he wishes to take care of his family, and he works hard to earn income to support his wife and children. *Id.* The applicant provides that he resided in France for 23 years and he became a French citizen. *Id.*

The applicant's wife explains that she met the applicant in October 2001, and she relocated to France to reside with him on March 3, 2003. *Statement from the Applicant's Wife* at 1. As noted above, the applicant's wife states that she returned to the United States when she became pregnant, but that her family did not assist her due to the fact that she was not then married. *Id.* She provides that she requires the applicant's support spiritually and financially, and she requires his assistance with the discipline of their children. *Id.* at 2. She expresses concern that her children could fall under negative influences without the applicant's presence. *Id.*

The applicant's wife explains that the applicant has a good job, and that her job is not secure. *Id.* She states that she works during the day and goes to school at night, and the applicant helps care for their children. *Id.* She asserts that she would experience difficulty without the applicant's assistance. *Id.*

The applicant's wife states that she and the applicant's children will experience emotional hardship if their family is separated. *Id.* at 2-3.

Upon review, the applicant has not shown that a qualifying relative will experience extreme hardship if the present waiver application is denied. The applicant has not asserted or shown that his wife will suffer hardship should she relocate to France with him. It is noted that the applicant's wife previously resided with him in France, and neither she nor the applicant stated that they experienced difficulty there. The applicant's wife indicated that the reason she left France and returned to the United States was so that she could receive assistance from her family due to her pregnancy. The record does not show that the applicant's wife would face significant challenges should she and the applicant return to France.

In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships his wife may face should she reside in France. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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 also not shown that his wife will suffer extreme hardship should he depart the United States and she remain. The applicant's wife expresses that she wishes to continue to have the applicant's emotional support and reside in a unified family. The AAO acknowledges that the separation of spouses often creates significant emotional hardship. However, such separation is a common consequence when a spouse relocates abroad due to a prior violation of U.S. immigration law and resulting inadmissibility. The applicant has not sufficiently distinguished his wife's emotional hardship from that which is commonly expected when spouses reside apart due to inadmissibility.

Federal court and administrative 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.

The applicant has not shown that his wife will endure significant financial hardship should she reside in the United States without him. The applicant provides documentation to show that his wife works for an optical laboratory at a rate of approximately $1,358.80 per month. *Letter from the Applicant's Wife's Employer*, dated February 28, 2007. However, the applicant has not stated his household's regular expenses, and he has not submitted documentation of their financial needs. Thus, the AAO is unable to assess the economic circumstances his wife would face should she lose the applicant's financial contribution to the household. The AAO acknowledges that acting as a single parent and meeting the needs of a household with one adult and two children is often challenging. However, the applicant has not provided adequate information or evidence to support a conclusion that his wife will suffer economic hardship that rises to an extreme level.

The record contains references to hardships that may be experienced by the applicant's children should they remain in the United States without the applicant. Direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's

children face significant emotional hardship due to being separated from him, and that they will lose his regular guidance and contribution to their household. Yet, the applicant has not established that his children will suffer consequences that can be distinguished from those ordinarily experienced upon separation from a parent due to that parent's inadmissibility. The applicant has not shown that his children's emotional hardship will elevate his wife's challenges to an extreme level.

Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should he depart the United States and she remain.

All elements of hardship to the applicant's wife have been considered in aggregate. The applicant has not provided sufficient documentation to show that his wife will experience extreme hardship, should she remain in the United States or depart with the applicant to maintain family unity. 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.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.