identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

H5

[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: AUG 13 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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 Liberia 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 procuring admission by 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 her U.S. citizen husband.

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 October 22, 2008.

On appeal, counsel for the applicant contends that the applicant's child is a qualifying relative, and that her child will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated November 18, 2008.

The record contains a statement from counsel on Form I-290B; copies of the applicant's daughter's birth certificate and passport; tax records for the applicant and her husband; copies of Liberian and Guinean passports for the applicant; a statement from the applicant; documentation relating to the applicant's husband's compensation; a copy of a health insurance card for the applicant and her husband; a copy of the applicant's marriage certificate, and; a copy of a Liberian birth certificate for the applicant. 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 on May 6, 1998 the applicant entered the United States using a Guinean passport under her name. The passport indicated that she was born in Conakry, Guinea on [redacted]

[redacted] In the course of her application for admission, she submitted a completed Form I-94, Arrival Record, in which she stated that she was a citizen of Guinea. From within the United States, the applicant then obtained a Liberian passport that reflects that she was born in Monrovia, Liberia on [redacted] and is a Liberian citizen. In an interview in connection with her Form I-485 application to adjust her status to lawful permanent resident, the applicant stated that she is in fact a citizen of Liberia, and that she obtained the Guinean passport due to the fact that she resided there as a refugee for five years.

Based on the applicant's own explanation, it is evident that she misrepresented her true nationality upon admission. The applicant cut off the material line of inquiry into her true identity and background in Liberia. Accordingly, she was deemed inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

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. 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, counsel for the applicant contends that the applicant's child is a qualifying relative, and that her child will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B* at 2. However, as noted above, in order to establish eligibility for a waiver under section 212(i) of the Act, the applicant must show that a U.S. citizen or lawful permanent resident spouse or parent will suffer extreme hardship. The applicant's daughter is not a qualifying relative in the present proceeding, and direct hardship to her is not a basis for a waiver under section 212(i) of the Act.

The applicant's only qualifying relative is her U.S. citizen husband. However, the applicant has not submitted a statement at any time that indicates that her husband will endure hardship should she be compelled to reside outside the United States. In the absence of clear assertions from the applicant,

the AAO may not speculate regarding the hardships her husband may face, whether he is separated from her or whether he relocates to Liberia. 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.

Counsel references poor conditions in Liberia, yet he limits his brief discussion to the impact such conditions would have on the applicant's daughter. The applicant has not provided sufficient explanation or documentation to show that her husband would face consequences in Liberia that can be distinguished from those commonly experienced when an individual relocates due to the inadmissibility of a spouse. 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.

As noted above, direct hardship to an applicant's child 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. The AAO has examined the statements from counsel regarding hardships to the applicant's daughter to determine if the record supports that such hardship will have an unusual impact on the applicant's husband. However, the applicant has not stated that her husband will be affected by their daughter's difficulty, and the record lacks adequate explanation or evidence in order for the AAO to conclude that the applicant's daughter's challenges would elevate her husband's hardship to an extreme level.

The record contains tax and income documentation for the applicant's husband. However, the applicant's husband earned approximately $35,000 in 2005, and the record does not suggest that he will endure economic difficulty should he remain in the United States without the applicant.

The AAO has examined the entire record to assess whether the applicant's husband will face hardship should the present waiver application be denied. Based on the foregoing, the applicant has not established by a preponderance of the evidence that her husband will suffer extreme hardship, whether he remains in the United States without her or relocates to Liberia to maintain family unity. Thus, the applicant has not shown that denial of the present application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.