identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

#2

H5

[redacted]

FILE: [redacted] Office: NEWARK, NJ Date: JAN 08 2010

IN RE: [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:

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, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Turkey 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 fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 29, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. indicating they were married on August 16, 2005; a letter from Mr. two letters from Mr. psychologist; letters of support; financial and tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

> 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 Act is inadmissible.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The field office director found, and counsel does not contest, that in April 2002, the applicant indicated she was married to and was issued a visitor's visa under the name " when, in fact, the applicant was not married at the time. The field office director further

found, and the applicant admits, that in July 2003, the applicant entered the United States as an imposter using a passport under the name of "Sule Sen Balkan" for which she paid $5,000. *Letter from*, dated April 24, 2007. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud of willfully misrepresenting a material fact to obtain an immigration benefit.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 under the Act. 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.

In this case, the applicant's husband, Mr. , states that he has lived in the United States for eighteen years and has become a U.S. citizen. Mr. states he started his own business, that his company is fifteen years old, and that he has paid taxes for the past eighteen years. In addition, Mr. states that he and his wife have a great life together with their daughter and that they enjoy their lives in this country. He contends that his life without his wife and daughter "would be a nightmare," that he would "go crazy," and "[t]hat's why [he] went to the psychologist." Mr. states that "[i]n [his] country, [Turkey,] there are too many problems that occur[,] you don't have the same opportunities[, and t]he government doesn't give you the same freedom of speech that the US has provided." *Letters from*, dated June 20, 2006, and April 26, 2007.

A letter from Mr. psychologist diagnoses Mr. with Generalized Anxiety Disorder/Adjustment Disorder. The psychologist states that Mr. "sought treatment and psychotherapy on April 20, 2007. He continues to be seen in weekly and/or biweekly psychotherapy for stress and anxiety – Rule Out – Major Depression Single Episode." The psychologist states that Mr. "continues to experience symptoms that indicate that his stress levels have increased and symptoms are worse – depressed mood most days, sadness, general pessimism, not really happy, insomnia, easily frustrated and irritable, feelings of inadequacy and recurring thoughts of failure and incompetence." The psychologist states that no medications are required and that if Mr. sleeplessness and agitation increase, he will be referred for a psychiatric consult. *Letters from*, dated July 6, 2007, and April 28, 2007.

After a careful review of the record, it is not evident that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that Mr. will endure hardship if his wife's waiver application were denied and is sympathetic to the family's circumstances. However, aside from contending that there are "too many problems," less freedom of speech, and fewer opportunities in Turkey, Mr. does not discuss the possibility of moving back to Turkey, where he lived until he was twenty-four years old, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. If Mr. decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the letters from the psychologist, the record does not show that the level of Mr. emotional hardship is extreme. Although the record indicates Mr. has been diagnosed with generalized anxiety disorder/adjustment disorder and attends therapy sessions, the letters from his psychologist fail to provide sufficient insight into Mr. condition. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any mental health condition or the treatment and assistance needed. Moreover, the psychologist indicates that Mr. anxiety is related to his wife's inadmissibility, but she does not comment on whether his anxiety might lessen if he relocated to Turkey with his wife and child and Mr. does not discuss the availability of mental health care in Turkey.

Furthermore, to the extent the record contains tax records and other financial documentation, the AAO notes that the applicant, who did not work while she was living in the United States, does not make a financial hardship claim. *Biographic Information (Form G-325A)*, signed by the applicant November 16, 2005 (indicating the applicant was a "housewife"); *2005 U.S. Individual Income Tax Return* (indicating the applicant's occupation was "housewife").

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.