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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H5



FILE: [REDACTED] Office: VIENNA, AUSTRIA Date: **MAR 25 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 Officer in Charge (OIC), Vienna, Austria, and 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 Albania who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the father of a naturalized United States citizen daughter. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife, daughter, son-in-law, and grandchildren.

The OIC found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 10, 2007.

On appeal, the applicant's wife and daughter state they are "very concerned regarding the denial of the visa of [the applicant]." *Letter attached to Form I-290B*, filed June 12, 2007.

The record includes, but is not limited to, statements from the applicant, his wife, and daughter; a letter from [REDACTED] regarding the applicant's medical conditions; and a pay stub for the applicant's wife. 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, that:

- (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 Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that the applicant presented a false high school diploma to establish his eligibility for an immigrant visa under the diversity visa lottery program. On July 15, 2005, the applicant's daughter became a United States citizen. On October 17, 2005, the applicant's daughter filed a Form I-130 on behalf of the applicant and her mother. On January 9, 2006, the Form I-130 was approved. On May 26, 2006, the applicant's wife entered the United States as a lawful permanent resident. On October 26, 2006, the applicant filed a Form I-601. On May 10, 2007, the OIC denied the applicant's Form I-601, finding the applicant had attempted to enter the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of a false high school diploma in order to obtain a diversity visa, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from 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. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's daughter will not be considered in this proceeding except to the extent that it creates hardship for the qualifying relative, her mother. 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).

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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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. The BIA has also held:

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to the applicant’s spouse must be established whether she resides in Albania or the United States, as she is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider all relevant factors in the adjudication of this case.

Based on the record before it, the AAO does not find the applicant to have established that his wife would experience extreme hardship if she returned to Albania. In a letter dated October 30, 2006, the applicant states he lives alone in Albania and his wife will not return to Albania “because she likes the life there.” The AAO notes that the record fails to indicate that the applicant’s wife has a medical condition, physical or mental, that would preclude her from returning to Albania. It also observes that the applicant’s wife is a native of Albania who spent her formative years there. Further, the record does not establish that she has no family ties to Albania. The record also fails to establish that the applicant’s wife has no transferable skills that would aid her in obtaining employment in Albania. Neither does the record contain country conditions materials or other documentation to establish that there are no employment opportunities for her in Albania. Therefore, based on the record before it, the AAO finds

that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Albania.

The record also fails to establish extreme hardship to the applicant's wife if she remains in the United States, in close proximity to her family and maintaining her employment. In a letter dated June 2, 2007, the applicant's daughter states that her mother cries everyday for the applicant because "she misses him very much and because she is worried every second about him." In a letter dated October 30, 2006, the applicant's wife states that the applicant "has been supporting [her] for so many years emotionally, financially, psychologically, and in so many other ways." The AAO notes, however, that the record fails to document, e.g., an evaluation by a mental health practitioner or other medical evidence, how the applicant's wife has been affected by her separation from the applicant. Additionally, the AAO notes that the record establishes that the applicant's wife is employed in the United States and does not indicate that she continues to require the applicant's support. Rather, the applicant's daughter states that the applicant cannot work because of his old age and bad health.

In a statement dated November 12, 2006, [REDACTED] finds the applicant to be suffering from severe headaches, loss of control of his body, and vomiting. [REDACTED] also states that the applicant's cholesterol is in the high 300s and reports certain cardiac conditions, advising the applicant to seek additional testing so that an exact diagnosis can be reached and further medical treatment provided. The AAO notes this evidence but does not possess the expertise to evaluate the cardiac conditions noted by [REDACTED]. In that [REDACTED] statement does not indicate the severity of such conditions or how they affect the applicant's ability to function independently, the AAO is unable to determine the status of the applicant's physical health. Further, as previously mentioned, hardship the applicant himself experiences as a result of his inadmissibility is not directly relevant to a section 212(i) waiver proceeding and the record, as just noted, does not provide sufficient evidence to establish how his health concerns are affecting his wife, the only qualifying relative.

The applicant's daughter states that after the applicant's visa was denied she "had an emotional breakdown. [She] went to see the doctor and he treated [her for] depression. Since that date [she has] been very depressed and [she is] still taking medications." The AAO notes that other than the applicant's daughter's statement, the record contains no evidence to establish that she is suffering from depression or the severity of her depression. 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)). Again, the AAO observes that hardship to the applicant's daughter is not directly relevant to a determination of extreme hardship in section 212(i) proceedings and the record fails to document how any emotional hardship the applicant's daughter is experiencing in the applicant's absence affects her mother, the only qualifying relative. The AAO also notes the applicant's daughter's claim of financial hardship, but does not find the record to support this claim as it contains no evidence of her family's income or expenses. *Id.* Accordingly, the AAO does not find the record to demonstrate that the applicant's wife would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

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