

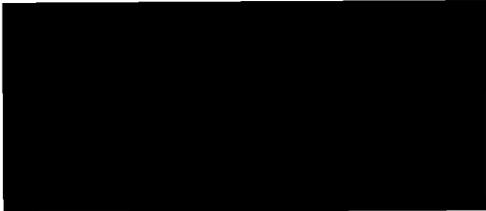
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SANTA ANA

DATE:

MAR 31 2010

IN RE: Applicant:



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 record establishes that the applicant, a native and citizen of Canada, misrepresented herself when attempting to procure entry to the United States in December 1999. Specifically, at the port of entry at Highgate Springs, Vermont, the applicant stated that the purpose of her visit to the United States was to shop in Boston, Massachusetts, when in reality, her true intention and purpose was to return to California to live with her U.S. citizen spouse. *Record of Sworn Statement in Proceedings*, dated December 13, 1999. The applicant was expeditiously removed. *See Notice to Alien Ordered Removed/Departure Verification*, dated December 13, 1999. The applicant was thus 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 having attempted to procure entry to the United States by fraud and/or willful misrepresentation.¹ 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 her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 10, 2007.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated October 6, 2007. The entire record was reviewed and considered in rendering this decision.

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

- (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 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

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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....

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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative and hardship to the applicant and/or their child² cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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). (Citations omitted).

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration, the applicant's spouse contends that he will experience emotional hardship were his spouse unable to reside in the United States, due to long-term separation from his spouse and child, who would reside in Canada with the applicant as she is the primary caregiver. *Form I-290B*, dated October 6, 2007. He further notes that he will suffer financial hardship as he will have to maintain two households, one in Canada and one in the United States. *Letter from* [REDACTED], dated August 31, 2007.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. It has also not been established that the applicant's child

² The record establishes that the applicant has a U.S. citizen daughter, born on January 7, 2006 and pursuant to the applicant's spouse's statement, "another on the way scheduled on November 16, 2007...." *Form I-290B*, dated October 6, 2007.

would suffer extreme hardship were she to remain in the United States with the applicant's spouse or alternatively, that the child would experience extreme hardship relocating to Canada with the applicant, thereby causing extreme hardship to the applicant's spouse, the only qualifying relative in this case. Moreover, it has not been established that the applicant's spouse, a native and citizen of Canada, is unable to travel to his home country on a regular basis to visit his spouse. 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)).

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant's spouse, no documentation with respect to the applicant and her spouse's financial situation, including income and expenses, assets and liabilities, has been provided on appeal to establish that the applicant's spouse would experience extreme financial hardship were his spouse to relocate abroad due to her inadmissibility. The AAO notes that in November 2006, the applicant's spouse declared an annual salary of \$140,000 and personal assets valued at over \$810,000. The applicant's and her spouse's joint assets totaled over \$1 million. *Form I-864, Affidavit of Support*, dated November 10, 2006. The applicant's spouse's salary alone is well over the poverty guidelines for 2009. *Form I-864P, Poverty Guidelines for 2009*. Nor has it been established that the applicant would be unable to obtain gainful employment while caring for their child in Canada or alternatively, as noted above, that the applicant's child would be unable to reside with her father in the United States, thereby affording the applicant the opportunity to work full-time and assist with the family's finances, as she has done in the past, as noted on the Form G-325A, Biographic Information. While the applicant's spouse may need to make adjustments with respect to the family's emotional and financial care while the applicant relocates abroad due to her inadmissibility, it has not been established that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will suffer extreme emotional and/or financial hardship due to the applicant's inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse contends that he is not able to relocate to Quebec, Canada to reside with the applicant because Quebec is a French speaking province, making it difficult for a U.S. citizen to live in and carry on with his life. He notes that he completed all of his education in English and has a very limited knowledge of the French language. In addition, the applicant's spouse notes that his child, being a U.S. citizen, deserves to be raised with the American way of life. *Supra* at 1.

To begin, it has not been established that the applicant's spouse, a native of Quebec, is unable to effectively communicate in the French language, as he was raised in Quebec, thereby causing him extreme hardship. Alternatively, it has not been established that the applicant's spouse is unable to obtain gainful employment in Canada that would allow him to speak in English, considering that almost 60% of the population in Canada speak English and Canada's official languages are French and English. *Background Note-Canada, U.S. Department of State*, dated February 2010. In addition, it has not been established that the applicant's child would suffer extreme hardship were she to reside in Canada, thereby causing extreme hardship to the applicant's spouse. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, the applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to reside in the United States, and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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. The waiver application is denied.