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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

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HS

FILE:

Office: PHILADELPHIA

Date:

MAY 11 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:



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 District 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 Syria 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 child.

The district 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 District Director*, dated November 29, 2006.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen wife and child will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B*, dated December 27, 2006.

The record contains briefs from counsel; statements from the applicant and his wife; copies of birth records for the applicant and his wife; copies of tax and banking records for the applicant and his wife; copies of bills for the applicant and his wife; a copy of the applicant's marriage certificate, and; documentation relating to the applicant's attempted entry to the United States using fraud and misrepresentation. 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 attempted to enter the United States using a fraudulent passport and false identity on or about May 8, 1996, thus he attempted to procure admission by fraud and

misrepresentation. The applicant concealed the fact that he had attempted to procure admission by fraud and misrepresentation in a subsequent nonimmigrant visa application (OF-156) filed on or about November 25, 1997, and in a Form I-485 application to adjust his status to lawful permanent resident filed on or about April 23, 1999. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his 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).

The applicant's wife stated that she has a son from a prior relationship, and that she has had difficulty caring for him because they both have asthma. *Statement from the Applicant's Wife*, dated January 2004. She explained that the applicant has helped her and her son, including driving them to medical appointments and taking her son out for dinners and movies. *Id.* at 1. She provided that she and her son consider the applicant to be her son's father. *Id.* She noted that she and the applicant plan to have another child once her health and financial situation improves. *Id.* She asserted that she and her son will suffer extreme hardship if the applicant departs the United States, as she cannot drive due to her health, and her son depends on him completely. *Id.* at 2.

The applicant's wife expressed that she and her son cannot relocate to Syria, as they do not know the language or culture, and medical and educational services are inferior to those in the United States. *Id.* She stated that her parents, brothers, and sisters are in the United States, as well as the applicant's parents and brothers. *Id.* She noted that she and the applicant will endure financial hardship if they depart the United States, and that they will be unable to achieve their goals. *Id.*

Counsel asserts that the applicant's wife will endure extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, dated January 25, 2007. He states that the

applicant's wife has strong family ties to the United States, but none in Syria. *Id.* at 4. He indicates that the applicant's wife would endure financial hardship and lose all she has built and accomplished over the last 30 years. *Id.* Counsel asserts that the applicant's wife and son have severe medical problems, and that they would lack required medical attention in Syria. *Id.*

Counsel asserts that the applicant and his wife wish to have a child, yet the government of Syria would prohibit them from doing so due to the applicant's wife being a foreigner. *Id.* Counsel states that economic, social, and political conditions are poor in Syria, and that the applicant's wife would endure hardship there as a result. *Id.*

Counsel contends that the applicant's son would endure emotional hardship if he must live without a father, which would create psychological challenges for the applicant's wife. *Id.*

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship if he is prohibited from residing in the United States. The applicant indicated on his Form I-601 waiver application that his mother and father are lawful permanent residents of the United States. However, the applicant has not asserted that his parents will endure hardship should he reside abroad. Thus, the applicant has not established that his parents will endure extreme hardship should the present waiver application be denied.

The applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant's wife stated that she and their son have asthma, and that their health has caused difficulty for her. She asserted that she is unable to drive due to her health. However, the applicant has not submitted any medical documentation for his son or wife. Counsel's and the applicant's wife's brief statements, without supporting documentation from medical professionals, are not sufficient evidence of a serious health condition. Further, the applicant has not submitted his son's birth certificate as evidence of his son's identity and status as a minor child. Accordingly, the applicant has not shown by a preponderance of the evidence that his wife or son have health problems that will impact his wife's hardship should the applicant reside outside the United States.

The applicant has not established that his wife will endure financial hardship should he depart the United States and she remain. The applicant has not indicated whether his wife works, and if so, what is her income. The applicant provided evidence of rent requirements and utility bills, yet the record does not show that the applicant's wife has unusual expenses that she would be unable to meet in his absence.

The applicant's wife expressed that the applicant has supported her and their son emotionally, and that she wishes for him to reside in the United States so that they can realize their family goals. The AAO acknowledges that the separation of spouses often results in significant emotional hardship. However, the applicant has not distinguished his wife's psychological difficulty from that which is commonly experienced by spouses who 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.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not established that his wife will suffer extreme hardship should she remain in the United States and he depart.

The applicant has not provided sufficient explanation or evidence to show that his wife will suffer extreme hardship should she relocate to Syria. The applicant has not provided any reports on conditions in Syria. The applicant's wife indicated that she may face a lack of medical assistance, and her son may lack educational opportunities, yet the applicant has not submitted any documentation to support these assertions. Counsel asserts that the applicant's wife has strong family ties to the United States, but none in Syria. *Brief from Counsel*, at 4, dated January 25, 2007. Yet, the applicant has not shown that he lacks relatives and connections in Syria that would offer him and his wife support. Counsel indicates that the applicant's wife would endure financial hardship and lose all she has built and accomplished over the last 30 years should she relocate abroad. *Brief from Counsel* at 4. Yet, the applicant has not articulated what his wife has accomplished in the United States or what she would lose, such as career opportunities or financial assets. As noted above, the applicant has not provided adequate documentation to show that his wife or son have health problems. Thus, he has not established that his wife or son would lack needed medical care in Syria.

Counsel asserts that the applicant and his wife wish to have another child, yet the government of Syria would prohibit them from doing so due to the applicant's wife being a foreigner. *Brief from Counsel* at 4. The applicant has not provided any reports or evidence to support this assertion.

Counsel states that economic, social, and political conditions are poor in Syria, and that the applicant's wife would endure hardship there as a result. *Brief from Counsel* at 4. Yet, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is noted that the U.S. Department of State does not have a Travel Warning or Travel Advisory issued for Syria as of the date of this decision. While Syria has experienced challenges including human rights abuses, and it is located in a region with recent conflict, the applicant has not specifically described how his wife would be impacted by residing there. *See, generally, U.S. Department of State, 2009 Country Reports on Human Rights Practices: Syria*, dated March 10, 2010. Without clear assertions from the applicant, the AAO may not speculate regarding hardships his wife may face should she reside abroad. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the applicant bears the burden to show eligibility. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Based on the foregoing, the applicant has not shown that his wife will endure extreme hardship should she relocate to Syria to maintain family unity.

Counsel contends that the district director failed to provide the applicant with complete information regarding an investigation into whether the applicant previously misrepresented his marital status, and that the applicant was unable to answer the allegation and that his due process rights were compromised as a result. *Id.* at 4-5. However, in his decision, the district director did not address the applicant's prior claims of his marital status, and such claims were not made a basis of the applicant's inadmissibility under section 212(a)(6)(C)(i) or any other section of the Act. As discussed in this decision, in the district director's decision, and in counsel's brief, there is ample evidence in the record to support that the applicant committed fraud and misrepresentation to procure admission, a visa, and lawful permanent residence. The applicant has been given full opportunity to address the facts that serve as the basis for his inadmissibility under section 212(a)(6)(C)(i) of the Act, and he does not contest his inadmissibility on appeal. As such, the applicant has not established that he was prejudiced by a lack of knowledge of the charges against him, or that his due process rights were compromised.

All elements of hardship to the applicant's wife have been considered in aggregate. The applicant has not shown by a preponderance of the evidence that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(i)(1) of the Act. 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.