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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:

Office: PHOENIX, AZ
(LAS VEGAS, NV)

Date:

MAY 11 2010

IN RE:

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, 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, Phoenix, Arizona and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Malaysia 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). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on her qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 20, 2007.

On appeal, counsel for the applicant asserts that United States Citizenship and Immigration Services (USCIS) did not consider all the factors and evidence submitted and that the applicant's spouse will suffer extreme hardship if the applicant is excluded from the United States.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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

During her adjustment of status interview on May 23, 2006, the applicant stated that when she entered the United States on August 30, 1998 using a B-2 nonimmigrant visa she was planning to marry her first husband and remain in the United States. Although, on appeal, the applicant states that she had not yet decided to marry at the time of her August 30, 1998 admission, this assertion does not overcome the testimony she provided at her adjustment interview. Based on the record, the AAO finds that the applicant used a nonimmigrant visa to enter the United States when she was an intending immigrant. Accordingly, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and must apply for a section 212(i) waiver of inadmissibility.¹

¹ In denying the applicant's adjustment application, the District Director noted that the applicant had a conviction for solicitation of prostitution. However, a single conviction for solicitation of prostitution does not render an applicant inadmissible under section 212(a)(2)(D)(ii) of the Act. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the U.S. citizen spouse of the applicant. Hardship an applicant experiences as a result of his or her inadmissibility is not directly relevant to a determination of extreme hardship under section 212(i) and will be considered only to the extent that it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez*, 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 *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals 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.

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 AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record of proceeding contains, but is not limited to, the following relevant evidence: briefs from counsel; statements from the applicant and her spouse; medical documentation pertaining to the applicant’s spouse’s back problems; property documents for the applicant’s and her spouse’s residence; documentation pertaining to the prior marriages of the applicant and her spouse; bank statements, tax returns, utility bills and other financial documentation; and photographs of the

The AAO also notes that even if the applicant’s conviction were considered to be a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act, it would be subject to the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act as the maximum sentence of imprisonment for a conviction under section 201.354 of the Nevada Revised Statutes does not exceed one year of imprisonment and the applicant was not sentenced to any time in jail.

applicant and her spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that the applicant's spouse suffered a herniated disk requiring surgery in 2000, and that he currently suffers from recurring back pain two or more times a month. Counsel asserts that the applicant's physical support during these episodes is crucial for her spouse, and that her exclusion would result in an extreme physical hardship for him. Counsel also asserts that the applicant and her spouse share a home and financial expenses, and that he is dependent on the applicant's income to meet their financial obligations. Counsel states that the applicant and her spouse are close emotionally, and that it would be a hardship for the applicant's spouse if the applicant were to be excluded.

In his submitted statements, the applicant's spouse asserts that when he suffers from back pain he is unable to perform simple chores such as driving, cleaning, cooking and doing the laundry, and that the applicant has been a tremendous help to him. He also states that he may need to rely on the applicant for income if he does not become a permanent employee of his current employer.

The record contains sufficient medical documentation to establish that the applicant's spouse suffered a herniated disk requiring surgery in 2000, and that he may be experiencing episodic pain related to that condition. However, the record does not include documentation, e.g., a statement from a physician, that establishes the applicant's spouse is periodically physically incapacitated by his medical condition or that he requires the applicant's assistance during these episodes. 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)).

With regard to the financial hardship that the applicant's spouse would experience if the applicant were to be excluded, the record contains evidence that the applicant and her spouse own a house, and that they share financial obligations. Counsel lists the applicant's and her spouse's expenses, and details the status of their employment and income. Counsel also asserts that the applicant's spouse is able to perform only limited employment because of his medical problems and that he would, therefore, be unable to work additional hours in order to meet his financial obligations. The AAO notes this information and finds the record to establish that the applicant and her spouse own a home and share financial expenses, but not what impact the applicant's removal would have on her spouse's financial circumstances. It also observes that the record contains no evidence in support of counsel's assertion that the applicant's spouse's back problems limit the number of hours he is able to work. Without actual documentary evidence of financial impact, such as accumulated debt or the applicant's spouse's current financial dependence on the applicant, the record does not demonstrate that the applicant's spouse would experience financial hardship based on the applicant's exclusion.

With regard to counsel's assertion that the applicant's spouse will be lonely without the applicant and will be depressed, the AAO accepts that the applicant's spouse will experience an emotional impact due to the applicant's exclusion. However, there is nothing in the record that documents, e.g., an evaluation of the applicant's spouse by a licensed mental health professional, how the applicant's spouse's emotional/mental status would be affected by his separation from the applicant. Having reviewed the record before it, the AAO does not find sufficient evidence of emotional,

financial, medical or other hardship factors that, in the aggregate, establish that the applicant's spouse would experience extreme hardship if the applicant's waiver request were to be denied and he remained in the United States.

As noted above, the applicant must also establish that a qualifying relative will experience extreme hardship if he or she relocates with the applicant. In this case, counsel for the applicant has asserted that the applicant's spouse is not familiar with Malaysian culture, has no family ties there, and would not be able to maintain his health insurance coverage. The applicant states that she has researched the possibility of her spouse becoming a resident of Malaysia and that it would be virtually impossible. She asserts that she has a friend who is married to a Taiwanese citizen and that he must leave Malaysia every six months. The applicant's spouse states that he cannot live in Malaysia because he does not know the opportunities there and is unsure if he could obtain medical insurance.

The record contains the section on Malaysia from the Department of State's Country Reports on Human Rights Practices – 2006, issued on March 6, 2007 and a report on the requirements for working and living in Malaysia copyrighted by [REDACTED]. The [REDACTED] report establishes the difficulties that non-Malaysians face in obtaining employment in Malaysia, as well as the bars to obtaining Malaysian residence. The AAO also notes that the applicant has always resided in the United States, has no family or economic contacts in Malaysia, and has a medical condition that has required recurring medical attention. The AAO finds that the preceding hardship factors, when considered in the aggregate, establish that the applicant's spouse would experience extreme hardship if he were to relocate to Malaysia with the applicant.

Nevertheless, as the record does not also establish that the applicant's spouse would suffer extreme hardship if the applicant were to be excluded and he remained in the United States, the applicant has not established eligibility 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.