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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  
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FILE: [REDACTED] Office: VIENNA, AUSTRIA

Date: APR 19 2010

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) AND Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application and the application for permission to reapply for admission after removal were denied by the Officer-in-Charge (OIC) Vienna, Austria. The matters are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bulgaria who entered the United States without inspection in April 2001. On October 20, 2006, the applicant was removed from the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i). The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been in possession of fraudulent immigration documents. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks permission to reapply for admission in order to travel to the United States and a waiver of inadmissibility in order to reside in the United States.

In a decision dated July 12, 2007, the OIC found that the applicant failed to establish that the hardship his spouse would face rises to the level of extreme hardship. The applications were denied accordingly.

In a Notice of Appeal to the AAO dated July 31, 2007, the applicant's spouse states that the OIC abused his discretion by failing to properly recognize evidence in understanding her extreme hardship and the circumstances of the applicant's actions.

The AAO notes that the OIC found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. Stated in pertinent part; ... (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer,.... *Department of State Foreign Affairs Manual*, § 40.63 N41-N.46. In addition, the Board of Immigration Appeals (BIA) found that it is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government. *Matter of D-L & A-M*, 20 I. & N. Dec. 409, 411 (BIA 1991).

The record indicates that on July 26, 2006 the applicant was stopped by police officers in Georgia, his car was searched, and the officer's found him in possession of a fraudulent permanent residence card, social security card, and Tennessee driver's license. The applicant was arrested and later detained by immigration on August 21, 2006. The AAO notes that the record does not show that the applicant presented these documents to a U.S. government official nor does it show that the applicant used these documents to gain or attempt to gain an immigration benefit under the Act. Thus, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C) of the Act.

The applicant is inadmissible under section 212(a)(9)(B)(II) of the Act. The record indicates that the applicant entered the United States without inspection in April 2001. The applicant remained in the United States until October 20, 2006. Therefore, the applicant accrued unlawful presence from April 2001 until October 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his October 20, 2006 removal from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant or his child is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes four letters from the applicant's spouse, a letter from the applicant, three letters from the applicant's spouse's family, a letter from the applicant's spouse's doctor, a letter from the applicant's spouse's psychotherapist, medical documentation regarding the applicant's spouse's pregnancies, financial documentation, and country condition information for Bulgaria.

The AAO notes that the record contains a birth certificate and U.S. passport for the applicant's son, born on April 20, 2009 in the United Kingdom. In addition, the record contains an ultrasound report dated October 9, 2009 showing that the applicant is four months pregnant with their second child with an estimated due date of March 16, 2010.

In a letter dated October 29, 2008, the applicant's spouse states that she is three months pregnant and is currently staying in the United States for health reasons and to help take care of her elderly mother. She states that for the last year and a half she has been living between the United States and the United Kingdom. She states that the reason for her extensive travel to the United Kingdom is because the applicant has been living and working there with full legal rights and with the appropriate visa as a European citizen. In a letter dated May 20, 2009, the applicant's spouse states that her son is not entitled to a British passport or the rights of a British citizen so she hopes to return to the United States soon. She states that she and her family reside in the United Kingdom but do not intend to make it their permanent home and that she has put all of her responsibilities in the United States on hold to be with her family. In a letter dated October 2, 2009 the applicant's spouse states that the applicant has been legally working in the United Kingdom for the last three years and that she has been living between the United States and the United Kingdom. She states that they cannot continue to live in the United Kingdom because of the high cost of living and her lack of opportunities for her to teach there. She states that she would like to have a stable family situation.

The AAO notes that the applicant's spouse states that the applicant is now residing and working in the United Kingdom with full legal rights and that her child cannot register for British citizenship. The applicant's spouse has failed to submit evidence to corroborate the assertion that her child cannot attain legal status in the United Kingdom. The applicant's spouse has also failed to submit documentation showing that she would not be able to find employment in the United Kingdom given her profession as an educator and/or that they cannot afford to live on the income earned by the applicant who is working in the United Kingdom. The AAO finds that the record does establish that the applicant's spouse has been spending time in the United Kingdom, the

applicant is employed in the United Kingdom, and that she has been receiving medical care in the United Kingdom during two pregnancies, even giving birth to her first child there.

The AAO also notes that the record contains a statement from the applicant dated September 5, 2007 and written before her pregnancy and before the applicant relocated to the United Kingdom in which she describes the hardship she is facing. She states that it would be an extreme hardship for her to live in Bulgaria, an underdeveloped, ex-communist country where she would be unable to practice her faith as a Catholic. She states that she has traveled extensively throughout Bulgaria and finds aspects of the culture and living standards disturbing. She submits travel information from the Department of State on Bulgaria, which states that health facilities in Bulgaria do not meet the standards of the United States or Western Europe. The AAO notes that the record does not establish that the applicant's spouse would have to live in Bulgaria upon relocation, as her husband has status in the United Kingdom. Furthermore, the current record does not establish that the applicant's spouse's hardship upon relocating to Bulgaria would rise to the level of extreme.

In her statement the applicant's spouse also states that she is having fertility problems, is seeing a psychotherapist on a weekly basis, helps her mother manage properties in Birmingham, cares for her special needs niece in Florida, and must maintain her employment in Georgia as she is destitute from trying to save her marriage and traveling to see the applicant. In addition to this statement, the record contains a letter from the applicant's spouse's psychotherapist dated September 6, 2007 which states that the applicant is suffering from depression, feels hopeless and on occasion has thoughts of suicide. She states that she feels that the depression is directly related to the uncertain situation of the applicant and that her fertility problems are adding to her stress. The record also contains a letter from the applicant's spouse's sister-in-law stating that she helps her in Florida with their handicapped daughter and a letter from the applicant's spouse's fertility doctor documenting her previous fertility problems. The AAO notes that later statements, which have been summarized above, indicate that many of these hardship issues are no longer relevant and/or conflict with other evidence in the record. Thus, the AAO finds that the applicant's spouse has not shown that she is suffering as a result of relocating to the United Kingdom.

However, the AAO does find that the applicant would suffer extreme hardship as a result of relocating back to the United States without the applicant. The applicant's spouse is now the mother of a ten month old boy and in one month will be the mother of a second child. The record also indicates that none of her family members live close to her in Georgia. The record shows that her mother lives in Birmingham, Alabama and her sister-in-law lives in New Jersey and in Florida. The record also shows that the applicant's spouse has a mortgage, credit card debt, and little to no savings. The applicant's spouse has also given up employment opportunities in Georgia to be with the applicant. Thus, the AAO finds returning to the United States without the applicant would be an extreme hardship on the applicant's spouse in that she would be a single mother of two children under the age of one, she would probably not have immediate help from family members, and she would have to find employment.

The AAO recognizes that the applicant's spouse will endure hardship and has endured hardship as a result of the applicant's inadmissibility. However, as the applicant has failed to show hardship to his U.S. citizen spouse in the event of relocation to the United Kingdom, where he resides, the AAO cannot find that he has established extreme hardship as a result of the applicant's inadmissibility.

The AAO notes that 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)). The applicant must submit documentation to support any claims of hardship.

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 he merits a waiver as a matter of discretion.

The AAO notes that in situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose." Thus, the AAO must also deny the applicant's application for permission to reapply for admission.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.