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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: BALTIMORE, MARYLAND Date: JUL 17 2003

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:

[redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUL1703_04H2212

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kenya who was admitted into the United States in 1999 with an F1 student visa by falsely claiming to be a student. The applicant is therefore inadmissible 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), as an alien who procured admission into the United States by fraud or a willful misrepresentation of a material fact. The applicant is married to a United States (U.S.) citizen and is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director found that the applicant failed to establish her husband would suffer extreme hardship if she were removed from the United States. The application was denied accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizen and Immigration Services, "Bureau") failed to consider all of the hardships claimed by the applicant and thus erred in not finding extreme hardship in the applicant's case. Counsel submitted a psychological report for the applicant's husband (Mr. [redacted]) to further support his assertion of extreme hardship.

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 may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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.

It is noted that Congress specifically did not mention extreme hardship to a U.S. citizen or resident child in the section

212(i) waiver provision. Hardship to the applicant's U.S. citizen child will therefore not be considered in this decision.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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 pursuant to section 212(i) of the Act. 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.

Counsel asserts that Mr. [redacted] would experience extreme hardship if his wife were removed from the U.S. and he remained in this country. Counsel asserts that Mr. [redacted] loves his wife and would suffer emotional hardship if he were separated from her. Counsel additionally asserts that Mr. [redacted] would not be able to pay his house payment and other bills without the applicant's supplemental income.

The May 23, 2002, psychological evaluation written by Dr. [redacted] concludes that it would be devastating for Mr. [redacted] if his wife were removed from the United States. However, the evaluation contains no information about the scientific or medical methods used by the doctor to reach his conclusion and it does not discuss previous or ongoing visits or treatment plans. Moreover, the record contains no information regarding Dr [redacted] credentials or background, and the evidence does not establish that Dr. [redacted] is qualified to assess Mr. [redacted] mental state. The psychological report is thus not considered to be probative evidence as to Mr. [redacted] emotional state.

In addition, the record contains no evidence of the applicant's or her husband's actual income or expenses. It is thus not possible to assess the level of financial hardship that Mr. [redacted] would face if the applicant were removed from the United States. 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. Counsel's assertions that Mr. [redacted] could face difficulty finding work if he relocated to Kenya therefore also does not establish extreme hardship.

Counsel additionally asserts that Kenya is unstable politically and that the crime and violence would cause hardship to Mr. [redacted]. Counsel submitted copies of Kenyan newspaper articles on crime and corruption. The articles are general in nature and do not pertain to the applicant, and they fail to establish that Mr. [redacted] would face any particular danger if he moved to Kenya.

Counsel asserts that Mr. [redacted] would also suffer extreme hardship if he moved to Kenya with his wife. Counsel states that Mr. [redacted] was born and raised in the United States and that all of his friends and family are here. In addition, Mr. [redacted] does not speak any Kenyan languages and the economy in Kenya is very poor. Counsel asserts that Mr. [redacted] would thus also face difficulty in finding work in Kenya.

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). *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.

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 removed from the United States. 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.