



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



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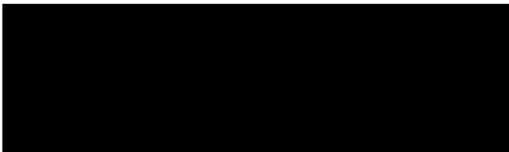
File:  Office: MONTERREY, MEXICO

Date: **FEB 2 2001**

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)

IN BEHALF OF APPLICANT:



Identification data deleted to prevent clearly unwarranted invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Monterrey, Mexico, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure a visa for admission into the United States by fraud or willful misrepresentation in 1998. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to travel to the United States to reside with her spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, counsel argues that the Service abused its discretionary authority in a situation where a positive determination to grant the waiver was warranted. Counsel asserts that the focus of the waiver should not be that the applicant committed an alleged fraud, but rather on the extreme hardship the applicant's spouse will suffer if the request is denied. Counsel also argues that because the applicant is not highly educated and previously lacked legal representation, she may have been confused and may have inadequately responded to questions from the consular officer abroad.

Upon submission of the appeal on March 17, 2000, counsel initially requested an additional 30 days to submit a brief and/or evidence in support of the appeal. No good cause for this request was shown. On April 18, 2000, counsel then requested an additional extension of 21 days in order to submit a psychological report on the applicant's spouse. As more than seven months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

The record reflects that the applicant was found by a consular officer to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Act for having submitted a fraudulent employment letter when applying for a nonimmigrant visa in 1998.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(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 Act is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a) (6) (C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez-Morales, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel indicates that the applicant's spouse has been seeing a psychiatrist who is preparing a report to identify the

psychological ramifications of his wife's not being allowed to reside with him in the United States. The report is not available in the record. In further regard to the claim of hardship to the applicant's spouse, the record does reflect that the applicant states that it is difficult for her spouse to be separated from her because he has no one to cook for him or do his housework.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside. 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.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.