



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE

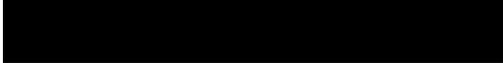


Office: SAN FRANCISCO, CA

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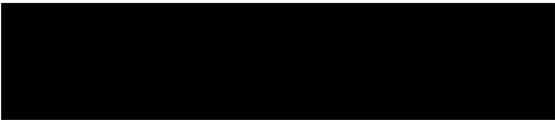
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under §
212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



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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 District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Costa Rica 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 attempted to enter the United States by fraud or willful misrepresentation in June 1995. The applicant is the unmarried daughter of a lawful permanent resident and is the beneficiary of an approved preference visa petition. The applicant seeks the above waiver in order to remain in the United States and care for her aging mother.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel submitted medical records indicating that the applicant's mother was diagnosed in Costa Rica as far back as 1992 as having Alzheimer's and Parkinson's disease. The applicant's mother was re-examined in September 1999 in the United States and that diagnosis was reconfirmed. The examining physician indicated that the mother's illnesses are chronic and progressive resulting in eventual complete disability and that she requires daily assistance in feeding, bathing and toilet care.

On motion, counsel states that the decision to dismiss the appeal misconstrues the record of proceedings and draws conclusions that are not supported by the record. Counsel also submits additional information to support the claim of extreme hardship to the applicant's mother.

The record indicates that the applicant initially resided in Fremont, California, with her mother from 1988 until 1993 when she returned to Costa Rica to be with her ailing father. The applicant remained in Costa Rica until her father's death and she returned to the United States in June 1995 by applying for and procuring admission as a temporary nonimmigrant visitor from an immigration officer at the Miami port of entry. Since the applicant was actually a returning immigrant without a valid immigrant visa instead of a bona fide nonimmigrant visitor as she represented herself, the district director determined that she procured her admission into the United States by fraud or willful misrepresentation.

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).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C)(i) 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, 21 I&N Dec 296 1966).

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 family ties to 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 the unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant's mother has two sons residing in the United States. One is a naturalized United States citizen residing in Vallejo, California and the other is a lawful permanent resident residing in Miami, Florida. The applicant's brother in California co-sponsored the applicant and the record reflects that the applicant's mother lived with this son from 1993 to 1995.

On appeal, the applicant's brother in California has submitted an affidavit indicating that his wife is unable and unwilling to assume responsibility for the day-to-day care for his mother. He states that it would be unfair of him to request that his wife learn Spanish in order to be able to communicate with his mother, who speaks only Spanish, and that he does not have sufficient income to pay for a care giver. He indicates that if the applicant is not permitted to remain in the United States, he will have no other recourse than to send his mother to Costa Rica to reside with his sister there. He states that this will cause his mother extreme hardship because she would find it difficult to adapt to a new routine and physical environment and would need to abandon her permanent residence in the United States. He states that he would also suffer extreme hardship in not being able to maintain a relationship with his mother due to separation.

Counsel argues that the unique nature of Alzheimer pathology must be taken into consideration, that Alzheimer patients regress both mentally and physically and their care is an enormous burden for family members. Counsel states that to dictate which family member must assume responsibility for the care of such a patient is an outrageous abuse of discretion.



A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's mother is currently suffering and will most likely continue to suffer physical, emotional and financial hardships due to her illness. The applicant has failed, however, to establish the existence of hardship to her mother (the only qualifying relative) caused by separation from the applicant that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. 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 decision dismissing the appeal will be affirmed. The application will be denied.

ORDER: The Associate Commissioner's decision of May 17, 2000 is affirmed. The application is denied.