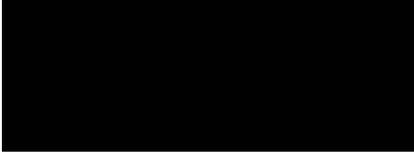




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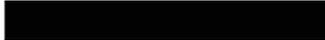
FILE:



Office: MIAMI (TAMPA), FL

Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Bulgaria 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), for procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated November 8, 2001.

On appeal, the applicant asserts that the acting district director failed to consider the totality of the circumstances in adjudicating the waiver application. *Form I-290B*, dated December 7, 2001. The Form I-290B indicates that a brief and/or evidence would be sent within 30 days, however, the AAO has not received this material. The record indicates that counsel was notified by the AAO to submit the material. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 15, 1995, the applicant entered the United States with a photo-substituted passport. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel states that on September 30, 1996, the waiver standard was changed by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to require a showing of extreme hardship to a qualifying relative as opposed to the prior standard of only requiring a qualifying relative. *I-601 Brief*, at 2, dated June 22, 1998. Counsel asserts that the IIRIRA provision changing the waiver standard did not contain an effective date and one of the primary tenets of statutory interpretation is that where a statute does not express an effective date, it is effective upon enactment. *Id.* Counsel cites *Landgraf v USI Film Prods.*, 114 S. Ct. 1483 (1994) in asserting that since Congress did not clearly intend the extreme hardship standard to apply to fraud or misrepresentations made prior to IIRIRA and the applicant's misrepresentation occurred prior to the enactment of IIRIRA, the extreme hardship standard does not apply to him. *Id.*

*Landgraf* held that a statute has a retroactive effect when:

[I]t would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result. *Landgraf* at 280.

Citing to *Matter of Soriano*, 21 I. & N. 516 (BIA, AG 1996) and *Landgraf*, the majority and therefore precedential opinion in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), stated that a statute is not retroactive if:

[I]t does not impair rights a party possessed when he or she acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. More specifically, an intervening statute that either alters jurisdiction or affects prospective injunctive relief generally does not raise retroactivity concerns, and, thus, presumptively is to be applied in pending cases. [citation omitted]. Likewise, the Attorney General concluded [in *Soriano*] that the new provisions in section 212(c) applied to pending cases because the new legislation acted to withdraw her authority to grant prospective relief; it did not speak to the rights of the affected party. [citation omitted]. The effect was therefore to alter both jurisdiction and the availability of prospective relief to the alien. [citation omitted]. *Cervantes-Gonzalez* at 564.

The BIA held in *Cervantes-Gonzalez* that a request for an INA § 212(i) waiver of the Act is a request for prospective relief and as such its restrictions may be applied to conduct which predates passage of the current statute.

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 [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez* provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include, but are not limited to, the presence of 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 significant conditions of health,

particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Bulgaria or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Bulgaria. Counsel states that the applicant's spouse has lived her entire life in the United States, her mother and three sisters are in the United States, she does not speak the Bulgarian language, she has limited job skills and she would not be able to find a job. *I-601 Brief*, at 2-3. Counsel states that the applicant and his spouse could not afford housing, food or healthcare in Bulgaria, and that health of the applicant's spouse would suffer due to living in a foreign country with no support network. *Id.* at 3. Adapting to a new culture is a normal result of joining a spouse in a foreign country, as is adapting to a new financial situation. The record does not reflect hardship beyond that which would normally be expected. Moreover, counsel's assertion regarding the employment situation in Bulgaria is not supported by evidence. Counsel asserts that the applicant's spouse has an obligation to care for her mother following her stroke and her mother would have to go into a nursing home which the family can't afford. *Id.* However, there is no evidence that her mother had a stroke. 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 assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not establish extreme hardship in the event that the applicant's spouse relocates to Bulgaria.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse has a stomach ailment which prevents her from working and she is completely dependent on the applicant for financial support. *I-601 Brief*, at 3. There is no substantiating evidence of this claim. Counsel states that the applicant's spouse has not yet seen a doctor. *Id.* After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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, *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. Moreover, the AAO notes that 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.

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.

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. *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.