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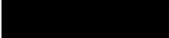
U.S. Department of Justice
Immigration and Naturalization Service



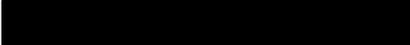
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Identifying data removed to
prevent clearly unwarranted
disclosure of personal privacy



File:  Office: MIAMI, FL

Date: DEC 17 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: SELF-REPRESENTED

Public Copy

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


for Robert P. Wiemann, Acting Director
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and seeks the above waiver in order to remain in the United States and reside with her spouse.

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

On appeal, the applicant's spouse submitted a letter stating that he did not understand what the problem was and requested that his wife's application for adjustment of status be processed. On motion, the applicant's spouse apologizes for the lack of understanding on his and his wife's part and states that the reason for the present motion is that his wife's misrepresentation was not willful in that she did not intend to misrepresent a material fact when procuring admission into the United States. The spouse asks if it would be possible to start the process over as husband and wife and states that he will seek assistance in the process.

The record reflects that the applicant's spouse, [REDACTED], filed a fiancée petition on behalf of the applicant on November 3, 1997. The petition was approved on October 21, 1998. On February 5, 1999, the applicant and [REDACTED] were married in El Paso, Texas. On February 9, 1999, the applicant procured a visa and entry into the United States as a nonimmigrant fiancée (K-1) when, in fact, she was already married to [REDACTED]. The applicant's failure to disclose the fact that she was already married shut off a line of inquiry which was relevant to her eligibility for visa issuance and admission into the United States as a nonimmigrant fiancée.

Section 212(a) of the Act states:

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) of the Act states:

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 section 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 section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial

impact of departure from this country; (5) 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.

No evidence or documentation to establish that the applicant's spouse would suffer extreme hardship if the applicant is removed from the United States has been submitted, either on appeal or on motion. 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 section 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 order dismissing the appeal will be affirmed. The application will be denied.

The denial of the application does not preclude the applicant from filing a new application for a waiver of inadmissibility with documentary evidence to establish that her spouse would suffer extreme hardship if she were removed from the United States.

ORDER: The Associate Commissioner's order dated May 15, 2001 is affirmed. The application is denied.