

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[REDACTED]

FILE [REDACTED] Office: LOS ANGELES, CA

Date: DEC 18 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]

Identifying 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 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 Citizenship and Immigration Service (CIS) 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

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

The applicant is a native and citizen of Taiwan who attempted to obtain legal permanent residence in the United States by falsely claiming to be married to a U.S. citizen. The interim district director found the applicant to be inadmissible pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act) as an alien who attempted to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. The applicant is the son of a naturalized U.S. citizen. He seeks a waiver of inadmissibility in order to remain in the United States with his parents and his fiancée.

The interim district director found that the applicant failed to establish that his parents would suffer extreme hardship if he were removed from the United States and denied the application accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service [INS, now Citizenship and Immigration Services (CIS)] has never officially made a decision regarding the applicant's admissibility; the interim district director improperly conducted the investigation into the applicant's admissibility; CIS has wrongfully denied the applicant's admissibility and the applicant's circumstances justify a waiver.

The record contains an affidavit of the applicant's mother, [REDACTED] dated June 17, 2003; a document from Taiwan listing the applicant's entries into the country (limited translation provided); copies of official documents received by the applicant in relation to his applications; a letter from the applicant's current attorney requesting a meeting with CIS officials in Los Angeles, dated May 23, 2001; a letter from a doctor verifying medical status for the applicant's mother, dated June 4, 2003; a letter from the Grand Medical Group verifying the pregnancy of Mei-Ling Hsiao, dated June 5, 2003; a letter verifying the employment of the applicant; copies of Taiwanese documents verifying the marriage and divorce of the applicant and his first wife [REDACTED] a copy of the certificate of death for May-Ling Chung; a copy of the resident alien card for the applicant's mother and copies of the applicant's passport and visa.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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 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.

While counsel contends that the applicant did not intend to file an Application to Register Permanent Residence or Adjust Status (Form I-485) indicating that he was married to a U.S. citizen, the record demonstrates that a Form I-485 based on his marriage to Croshonda Thomas, a U.S. citizen, was filed with INS (CIS) on October 2, 1996.

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. 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). In the present application, in order for the applicant to qualify for a section 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen parent(s). It is noted that Congress specifically did not include hardship to an alien's children or fiancée as a factor to be considered in assessing extreme hardship.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems 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 contends that the applicant's parents rely on the applicant to assist in running their nursery and in attending to their needs. See *Affidavit of Chang Chiu Chen Chi*, dated June 17, 2003. The record does not establish that the applicant is

the only person able to care for his parents or for their business. The record reveals that the applicant is employed on a full-time basis in a capacity other than running the nursery. See *Letter of Employment from Master Parts, dated January 30, 2001*. Counsel also states that the applicant's fiancée is pregnant with his child and that he acts as her provider and caretaker as she is not employed. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the spouse or parent of the applicant. The law does not provide for consideration of hardship to the applicant's intended spouse or his expected child.

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.

A review of the documentation in the record reflects that the applicant has failed to demonstrate that his U.S. citizen parent(s) would suffer extreme hardship if he 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. 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.