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U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE, MARYLAND

Date:

FEB 03 2005

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)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland and was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, but the previous decisions of the District Director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Morocco who was found to be inadmissible to the United States (U.S.) 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 procured entry into the United States by willful misrepresentation, in that she failed to reveal her intent to immigrate to the United States when she obtained her visitor's visa. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and son.

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 AAO affirmed the district director's decision on appeal.

Counsel bases the present motion to reopen on the fact that the applicant gave birth to a child on March 10, 2003. Counsel submits a birth certificate, a statement by the applicant's husband, and a copy of the United Nations Convention on the Rights of the Child. On motion, counsel reiterates issues already dealt with by the AAO in its dismissal of the appeal, such as the applicant's emotional suffering if he remains in the United States and his financial hardship if he relocates to Morocco. The only new issue on motion is the impact of the birth of the child on the applicant's husband.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

Since counsel provides evidence of a new fact, the birth of the applicant's child, the application will be reopened in order to address the impact of this development.

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 § 212(i) waiver of the bar to admission resulting from violation of § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself or her child experiences is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

Counsel contends, on motion, that the applicant's son would be deprived of certain human rights if he accompanies the applicant to Morocco. As noted above, however, the effects of the applicant's removal on her son are not relevant to this analysis. Counsel also maintains that if the applicant is removed and chooses to leave their son with her husband, the latter will suffer extreme hardship, because, in addition to the emotional issues discussed in the AAO's decision on the appeal, he will be unable to make nighttime childcare arrangements or to afford childcare. Counsel reiterates the same contentions made on appeal regarding the possibility of the applicant's husband's relocation to Morocco, adding the additional financial impact of the expenses incurred by their child.

In his statement on motion, the applicant's husband writes that he would have difficulty coping with parenthood alone, given his duties as a medical resident. Although the AAO recognizes that caring for children as a single parent places an added financial and emotional burden on the parent, the record does not establish that the applicant's husband would be unable to make suitable arrangements to care for their child without the presence of the applicant. There is also no evidence that the applicant could not contribute to the family's expenses after her removal to Morocco, thus easing the financial burden on her husband. The record does not establish that the addition of a child to the applicant's husband's concerns would cause him to experience extreme hardship if he decides to remain in the United States.

The record fails to demonstrate that the applicant's husband would be unable to secure employment in Morocco, despite counsel's assertions to this effect. There is no evidence that the fact that the applicant now has a child would worsen the applicant's husband's situation in Morocco to the extent that he would suffer extreme hardship should he choose to relocate to that country.

The AAO has reviewed of all the documentation on the record in light of the new fact of the birth of the applicant's child. The evidence does not establish that the director's denial of the waiver application or the AAO's dismissal of the appeal are incorrect or that the decisions need be changed. 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.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The motion is granted, and the previous decisions of the District Director and the AAO will be affirmed.