



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date: FEB 24 2005

IN RE:

[REDACTED]

PETITION: 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 PETITIONER:

[REDACTED]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native of Romania who was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a United States citizen. The applicant married a citizen of the United States on June 19, 1997 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse and U.S. citizen children.

The acting district director concluded that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act and therefore, was ineligible for a waiver of his inadmissibility. *Decision of the Acting District Director*, dated January 27, 2003.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] used an incorrect standard in evaluating the evidence presented and in deciding the waiver. Counsel further asserts that CIS abused its discretion by arbitrarily and capriciously denying the Form I-601 waiver and that several issues raised by CIS clearly point to the fact that CIS did not review the contents of the entire file. *Basis for Appeal*, dated February 2, 2003. The AAO notes that counsel requested 30 days after filing the appeal to submit a brief and/or evidence to the AAO. Approximately two years have elapsed since the filing of the appeal and no additional documentation has been received into the record. The appeal will therefore be decided based on the record as it currently stands.

The record contains three letters from counsel, dated April 30, 2003; March 24, 2003 and February 13, 2003, respectively and a letter from the applicant's spouse, undated. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 [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.

The record reflects that on July 19, 1994, the applicant applied for admission to the United States at the Peace Bridge, Buffalo, New York by presenting a Pennsylvania Driver's License and a United States social security card. The applicant claimed to be a naturalized United States citizen.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

*Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.* The decision of the acting district director therefore erred in finding the applicant ineligible for a waiver pursuant to section 212(i) of the Act.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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*, 22 I&N Dec. 560, 565-566 (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 offers a letter from the applicant's spouse as evidence of extreme hardship imposed by the applicant's inadmissibility to the United States. The applicant's spouse states that she and the applicant love each other very much. Letter from [REDACTED] undated. The applicant's spouse indicates that the applicant is loving and helpful in the rearing of her son, the applicant's stepson. She contrasts the applicant's actions with those of her former husband, the father of her child, and states that the applicant is a real father. *Id.* The applicant's spouse further indicates that the applicant helps to support the family financially. *Id.* The AAO notes that the record reflects that the applicant and his spouse also have a biological child born to them on November 14, 2000. See Note appended to Letter from [REDACTED]. The record does not establish that the applicant will be unable to provide financially for his family from a location outside of the United States. The record does not establish that the earnings of the applicant's spouse are insufficient to meet the financial needs of the applicant's spouse and children.

The record makes no assertions regarding family ties outside the United States of the applicant's spouse; the conditions in the country or countries to which the applicant's spouse would relocate and the extent of the ties of the applicant's spouse in such countries. Further, the record makes no assertions regarding significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the applicant's spouse would relocate.

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. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level 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.

The decision of the acting district director states that, as a result of the incident that occurred on July 19, 1994, the applicant was excluded and deported from the United States pursuant to section 235(b)(1) of the Act for engaging in fraud as well as being an immigrant without a valid immigrant visa. The AAO acknowledges counsel's assertion that removal proceedings against the applicant were terminated in immigration court in Buffalo. *Basis for Appeal.* The AAO finds that this issue, as scantily mentioned in the materials submitted by counsel, has no bearing on the adjudication of the applicant's Form I-601 waiver and therefore the AAO renders no opinion on whether or not the decision of the acting district director erred in regard to the aforementioned removal proceedings.

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.