

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H 2

FILE:



Office: CHICAGO, ILLINOIS

Date: JUN 10 2005

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Japan who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant attempted to procure admission into the United States in 1995 by falsely claiming to be a U.S. citizen; she is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and child.

The district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband and denied the application accordingly. On appeal, counsel states that the district director erred in failing to consider numerous hardship factors, such as the applicant's husband's inability to assimilate into Japanese society. Counsel submits affidavits by the applicant and her husband, several letters of support, family financial documentation, country conditions information about Japan's economy and social system, and other documentation. The AAO has reviewed the entire record and concurs with the district director's conclusion in this matter.

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, in pertinent part, that:

- (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.

The record reflects that on August 24, 1995, the applicant attempted to enter the United States by claiming to be a U.S. citizen, which she knew to be incorrect. The applicant asserts in her statement on appeal that she made the false claim because she was scared and wanted to return to Chicago with her fiance. Nevertheless, her act constituted a willful misrepresentation of material fact for which she is inadmissible.

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat.

5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, § 274C of the Act, 8 U.S.C. § 1324c was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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 § 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). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

The AAO notes that, pursuant to § 212(i) of the Act, hardship the alien herself or her child experiences upon deportation is irrelevant. In the present case, only hardship the applicant's husband suffers may be considered. Thus, although the record contains assertions regarding the applicant's son's potential difficulties in Japan or in the United States without the applicant, such hardship is only relevant inasmuch as it causes the qualifying relative (the applicant's husband) to suffer extreme hardship.

Counsel points out on appeal that *Matter of Cervantes-Gonzalez, Id.*, provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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, in Japan, the applicant's husband would suffer societal discrimination amounting to extreme hardship due to the fact that he is African American. Counsel provides several articles regarding the systemic discrimination and ostracism encountered by non-Japanese individuals living in Japan. The applicant asserts that her husband will never be accepted either by her family or her countrymen. It must be remembered that many persons experience hardship when moving to a country whose culture and language are unfamiliar. Reestablishing oneself abroad is often difficult. However, the evidence on the record supports a conclusion that the cumulative effect of the applicant's husband's suffering, should he choose to relocate to Japan, could go beyond that which is normally expected due to cultural and language differences.

In his statement submitted with the I-601 application, the applicant's husband indicated that he would suffer if

the applicant is separated from him, because they have an extremely strong emotional bond. The AAO acknowledges that it has been held that “the family and relationship between family members is of paramount importance” and that “separation of family members from one another is a serious matter requiring close and careful scrutiny.” *Cerrillo-Perez v. INS*, 809 f.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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. Also, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.

The AAO recognizes that the applicant’s husband will be faced with very difficult choices and emotionally trying times if the applicant is removed. The documentation on the record, however, does not establish that, if he remains in the United States, he would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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 § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.