



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: NEWARK, NJ

Date: **NOV 02 2005**

IN RE: [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]

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, August 4, 2003.

Counsel, by implication, asserts that the applicant did not misrepresent a material fact to gain entry and that the applicant's spouse had demonstrated extreme hardship.

The record contains a letter from [REDACTED] applicant's father-in-law, a rebuttal memorandum in response to the notice of intent to deny the application for waiver from counsel, an affidavit from the applicant's spouse, dated June 10, 2002, a letter from applicant's attorney in support of the appeal, and copies of documents created by then Immigration and Naturalization Service employees related to his entry. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by fraudulently presenting a Resident Alien Card on August 7, 1996 at JFK airport in attempt to gain entry into the United States. Counsel requests remand "based on the error regarding the alleged misrepresentation by the Appellant regarding his alleged prior residence in the U.S. from August 1995 to August 1997." *Letter from Counsel in Support of Appeal*, page 1. Counsel is referring to the letter submitted by applicant's father-in-law that indicates the applicant was present in the father-in-law's house beginning in 1995. The point is irrelevant to the issue of whether the applicant misrepresented a material fact to gain entry into the United States. In a

sworn statement taken by a United States Immigration Officer on August 7, 1996, the applicant admitted to attempting to gain entry using a resident alien card given to him by a friend that belonged to an individual who he did not know. He also admitted that he was aware that he was trying to enter the United States illegally. See Form I-215W, *Record of Sworn Statement in Affidavit Form*. The record is thus clear that the applicant violated Section 212(a)(6)(C) of the Act and is inadmissible.

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 hardship suffered by the applicant's wife. 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 Bureau of Immigration Appeals 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 indicates that the district director provided insufficient time to respond to a request for medical evidence supporting the extreme hardship claim. As indicated above, information related to health issues could be relevant to a claim for extreme hardship. However, counsel did not attempt to submit any such information with the initial application for waiver, which was received on April 26, 2002, nor did he attempt to submit any additional information during the period of over one year before the notice of intent to deny was issued. The notice of intent to deny, dated June 17, 2003, provided the applicant (and counsel) with thirty additional days to rebut the reasons outlined in the notice of intent to deny. Counsel submitted a rebuttal letter on July 14, 2003. That letter states, in conclusion:

If the Service still isn't satisfied that sending Mr. [REDACTED] away will destroy Mrs. [REDACTED] well being and emotional security and possibly ruin her life, in light of the fact that these type of waivers have been routinely granted before, we respectfully request a ninety (90) day extension to provide medical evidence of the extreme hardship along with additional evidence. *Rebuttal*, Page 2.

In effect, counsel was conditionally asking the district director for ninety additional days if she denied the waiver application. While the AAO does not agree with the district director that the conditional request was an acknowledgement of failure to meet the burden of proof, see *Decision of the District Director*, Page 9, denying the request is not an abuse of discretion given the context in which it is made and the total length of time during which evidence in support of the application could have been submitted.

U.S. court decisions have held that the common results of removal are insufficient to prove extreme hardship. 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. *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. The applicant's spouse provided an affidavit in support of the claim that she would suffer extreme hardship. The affidavit describes her long relationship with her husband and her dependence on him. Such information is relevant but is insufficient, without more, to demonstrate hardship beyond that which could be described by the phrase "common result of deportation." There is no evidence concerning her ties outside the United States, conditions in Guyana or any other country to which she and the applicant might relocate. There is no evidence about significant conditions of health or the unavailability of suitable health care in Guyana. In short, there is no evidence in the record to contradict the conclusion of the district director, "[t]he record does not contain any evidence of extreme hardship, only instances of extremely frustrating inconveniences...." *Decision of the District Director*, Page 6.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.