



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, ILLINOIS

Date: MAY 12 2006

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.

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 Korea, who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible pursuant to § 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 admission into the United States in 1994 by using a fraudulent permanent resident (LPR) card. The applicant 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 his wife.

In a decision dated March 22, 1999, the district director denied the applicant's Application for Waiver of Grounds of Excludability (Form I-601). The district director determined that the applicant had failed to establish that his spouse would suffer extreme hardship on account of his inadmissibility.

On appeal, counsel asserts that the Service (now Citizenship and Immigration Services, "CIS") should not have allowed the applicant's previous representative to represent him, as counsel states that that individual was not accredited. Counsel also contends that CIS failed to consider and analyze the evidence the applicant submitted in support of the extreme hardship factors claimed. Counsel submits copies of previously submitted evidence, which he claims establishes extreme hardship to the applicant's wife.

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 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.

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 to the citizen or lawfully resident spouse or parent. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors 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.

The AAO notes 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. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, 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. 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. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

Counsel points out that the applicant's wife has been living in the United States since approximately 1985, her parents and three siblings live in the United States, she belongs to a church, and she and the applicant own two dry cleaning shops. Counsel suggests that if she leaves the United States to accompany the applicant, she will suffer emotional distress due to her strong roots in this country. In her affidavit dated November 6, 1999, the applicant's wife stated that she did not believe she could readjust to life in her native Korea. She also wrote that to remain in the United States separated from the applicant would violate her religion and would subject her to great suffering.

The AAO recognizes that the applicant's wife is faced with difficult choices and challenges due to the applicant's inadmissibility. Her suffering is by no means taken lightly; however, the evidence does not establish that her experience is or would be more negative than that of similarly situated persons. In order for hardship to be considered extreme, as discussed above, it must go beyond the usual difficulties encountered by family members of inadmissible aliens. A review of the documentation in the record, when considered in its totality, reflects that the applicant's wife's hardship is typical to spouses of individuals subject to removal. The record fails to show that the applicant's U.S. citizen spouse 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 he 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.