



U.S. Citizenship
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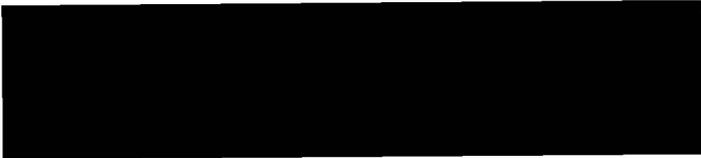
Date: OCT 19 2006

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 Bolivia 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 admission 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 reside in the United States with her spouse.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated February 22, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated March 21, 2005; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from the applicant's spouse, employment letters for the applicant's spouse; a letter from [REDACTED] M.A., CCC-SLP, Speech-Language Pathologist, Havlicek Elementary School; a medical letter from [REDACTED] for the applicant's spouse's father; and tax statements for the applicant and his spouse. 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 admitted in her adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact. *Form I-485; Record of Sworn Statement, dated October 28, 2004.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 family ties to 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 extreme hardship to the applicant's spouse must be established in the event that he resides in Bolivia or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Bolivia, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse's entire family lives in the United States, and although he is originally from Bolivia, he no longer has any immediate family there. *Letter from the applicant's spouse, dated December 18, 2004*. The son of the applicant and her spouse has a speech impairment for which he receives therapy twice a week. *Letter written by CCC-SLP, Speech Language Pathologist, Havlicek Elementary School*. The applicant's spouse does not believe his son would be able to learn Spanish if his family resided in Bolivia, as he is just beginning to master his native language of English. *Letter from the applicant's spouse, dated December 18, 2004*. The applicant's spouse does not believe he would be able to pay for his son's speech therapy services out-of-pocket, nor does he think these services would be covered by insurance in Bolivia. *Id.* While the AAO acknowledges these difficulties, it notes that neither the son nor the applicant's spouse is required to reside in Bolivia. In 2004, the applicant's spouse's father was diagnosed with prostate cancer. *Medical letter from [REDACTED], dated December 6, 2004; Letter from the applicant's spouse, dated December 18, 2004*. The applicant's spouse is concerned that he would no longer be able to provide for his father financially if he were to reside in Bolivia. *Id.* The AAO recognizes the applicant's spouse's concern; however, it notes that the applicant has several siblings in the United States who assist with the financial support of their father. *Id.* Although the applicant's spouse states he does not have a job in Bolivia and would not be able to receive training (*Id.*), the AAO observes there is nothing in the record that shows the applicant and her spouse would be unable to contribute to their own financial well-being from a location outside of the United States. When looking at the

aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Bolivia.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. Counsel asserts that the applicant's spouse would suffer a hardship if he had to support his household in the United States and his spouse in Bolivia. *Attorney's brief*. The AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. Counsel also states that the applicant's spouse would suffer an emotional hardship in being separated from his wife and in having to choose between separating his son from the applicant or having his son remain in the United States where he can continue his therapy treatment. *Attorney's brief*. 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 will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in 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.