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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CLEVELAND, OH

Date: JUN 05 2007

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, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure, and for procuring, admission into the United States by fraud or willful misrepresentation. The applicant's spouse and child are U.S. citizens and he 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 his family.

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*, dated February 15, 2006.

On appeal, counsel asserts that the district director erred as a matter of law and fact in denying the application. *Form I-290B*, received March 20, 2007.

The record includes, but it not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, evidence of the applicant's spouse's financial debts, photographs of the applicant's family, medical records related to the applicant's spouse and father, records related to the applicant's spouse's business and country condition information on Ghana.

The record reflects that on July 22, 1993, the applicant attempted to enter the United States with another person's passport and lawful permanent resident card. He was subsequently ordered excluded on October 4, 1993 and he was deported on October 28, 1993. While filing for a B-2 visitor visa, the applicant failed to disclose that he had previously attempted to enter the United States through fraud or willful misrepresentation and that he was previously ordered excluded.¹ The applicant used this visitor visa to enter the United States on December 30, 2000. As a result of these prior misrepresentations, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.²

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

¹ The applicant states that during the nonimmigrant visa application process, he withheld the fact that he had previously attempted to enter the United States with false documentation. *Applicant's Statement*, at 2, dated August 24, 2006. At the applicant's adjustment of status interview on April 7, 2005, he states that he never wrote about his deportation on his nonimmigrant visa application. *I-485 Processing Worksheet*, undated.

² The district director states that upon being found to be an imposter, the applicant continued to willfully deceive the government by claiming a false name and date of birth. *Decision of the District Director*, at 1. However, there is no evidence that he procured or sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act with the false identity. The AAO notes that the applicant indicated on his adjustment of status application that he had not been deported and that he had not previously committed a misrepresentation. *Applicant's Form I-485*, at 3, received February 24, 2004.

- (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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 (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, but are not limited to, the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Ghana or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative upon relocation to Ghana. Counsel states that the applicant's spouse grew up in Cleveland, she is close to her two step-sisters and her step-brother, she has close ties to her mother who has several medical issues, and she is currently pursuing a master's degree. *Brief in Support of Appeal*, at 1-2, dated April 12, 2007. Counsel states that the applicant's spouse's entire family lives in the United States, she has no family abroad, she would have feelings of guilt and abandonment for leaving her mother and turning her back on her father's medical and legal issues, and she has lived her entire life in the United States. *Id.* at 5. The record reflects that the applicant's spouse's father has been diagnosed with schizophrenia and has a criminal record. *Mental Health Court Docket Document and Psychiatric Evaluation*, dated September 12, 2005. He has given power of attorney over his affairs to the applicant's spouse. *Power of Attorney*, dated September 13, 2005.

In regard to financial hardship, counsel states that the applicant's spouse has accumulated a loan debt of approximately \$80,000. *Brief in Support of Appeal*, at 2. The record includes substantiating evidence that the applicant's spouse is a graduate student at Youngstown State University and she has significant debts from various loans. Counsel states that the applicant's spouse established her own college textbook business. *Id.* at 2. This claim is also documented by the record. In regard to country conditions, the record reflects that medical facilities outside of Accra are limited and that the general standard of living is lower than the United States. *Department of State, Consular Information Sheet, Ghana*, at 1-5, dated June 14, 2006. The AAO notes that these are general country conditions and the record is not clear as to the specific circumstances that the spouse would face if she relocates.

Considering the applicant's spouse's obligations to her family in the United States (especially in light of her parents' issues), her academic and business ties to the United States, her lack of ties to Ghana, and in particular, her significant financial debt, the AAO finds that she would experience extreme hardship in the event of relocation to Ghana.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse will be separated from the applicant and her child for significant periods of time and that this severing of ties cannot be understated. *Brief in Support of Appeal*, at 4. Counsel states that the applicant's duties in regard to the applicant's spouse's mother would now fall upon the applicant's spouse and she may be unable to manage them. *Id.* at 5. The record includes a doctor's note which reflects that the applicant's spouse's mother has had multiple strokes, hypertension, lumbar stenosis and a history of lupus. *Note from Internal Medicine Center of Akron*, undated. The applicant's spouse states that she takes care of her mother's physical needs on a daily basis. *Applicant's Spouse's Statement*, at 1, dated August 27, 2006. The applicant's spouse states that she is the only surviving immediate family member of her father. *Letter to Adult Parole Authority*, dated October 20, 2005. The record includes a power of attorney document that gives the applicant's spouse responsibility for her father and which details the numerous areas in which she is responsible for her father. *Power of Attorney*, dated September 13, 2005. As previously noted, the applicant's spouse's father has been diagnosed with schizophrenia and has a criminal record. *Mental Health Court Docket Document and Psychiatric Evaluation*, dated September 12, 2005.

In regard to financial hardship, the applicant's spouse contends that the applicant's income upon graduation would help with paying her student loans. *Applicant's Spouse's Statement*, at 3. The record includes substantiating evidence of the applicant's spouse's student loans and the applicant's attendance at Kent State University, thereby rendering her claim plausible. The applicant's spouse states that she would have to shut her business down and it would be impossible to repay the business loan. *Applicant's Spouse's Statement*, at 2. Counsel states that without the applicant to assist with the business, the applicant's spouse has been forced to reduce her hours as a security screener and has less money to use for the basic needs of her and her family. *Brief in Support of Appeal*, at 6. The AAO notes that the record does not include substantiating evidence of the applicant's spouse's employment as a security screener.

Counsel states that the applicant's spouse has been unable to balance her divergent needs without the support of her spouse, and the stress of the applicant's removal coupled with her inability to cope with multiple obligations has lead her to seek psychiatric therapy and to the prescription of antidepressant medication. *Id.*

The applicant's spouse's physician details her difficulty sleeping, anxiety and decreased appetite. *Notes from* [REDACTED] dated March 5, 2007. The record includes an antidepressant prescription for the applicant's spouse which was prescribed for insomnia.

Considering the totality of the circumstances, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentations and exclusion order.

The favorable factors include the presence of the applicant's U.S. citizen spouse and child, his lack of a criminal record and the extreme hardship that his removal would cause his spouse.

The AAO finds that the misrepresentations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.