



U.S. Citizenship
and Immigration
Services

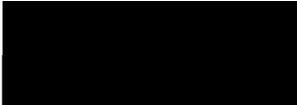
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FILE:



Office: LOS ANGELES, CALIFORNIA

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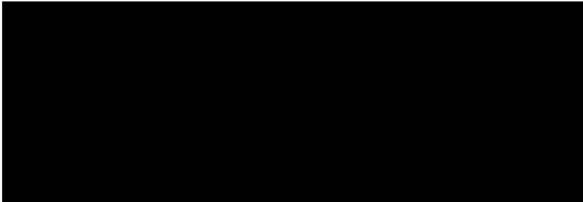
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who is the beneficiary of an approved Petition for Alien Worker, Form I-140. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be 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), for having procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to thoroughly analyze the facts and evidence in the case, in particular, the evidence relating to the hardship that the applicant's natural parents would experience if the applicant were removed. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of a fraudulent passport to procure admission into the United States in 1988. Counsel does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1).

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. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen parents. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, 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.

Id. at 566.

The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). *Perez v. INS*, *supra*, defined “extreme hardship” as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that the applicant was adopted as a child, and he submitted two different Forms I-601, one listing his biological parents and the other listing his adoptive parents. The record contains no information

regarding the hardship that his inadmissibility would cause his U.S. citizen, legal, adoptive parents. On appeal, counsel only discusses the hardship that the applicant's removal would cause his biological parents. However, the applicant's adoption certificate reflects that he was adopted by his aunt and uncle on February 22, 1980, and the accompanying court decision indicates that the applicant was freed of all legal obligations with respect to his natural parents and that he became the child of his adoptive parents for all legal intents and purposes. For this reason, although the applicant's biological mother is a naturalized U.S. citizen and his biological father is a Lawful Permanent Resident (LPR), the applicant's biological parents cannot be considered to be qualifying relatives for the purposes of this waiver application.

Even if the applicant's biological parents qualified as relatives within the § 212(i) waiver context, the evidence does not establish that they would experience extreme hardship as a result of the applicant's inadmissibility. On appeal, counsel refers to the affidavits executed by the applicant's biological parents and submitted to CIS with the waiver application on December 19, 2001. The applicant lives in California and his natural parents live in Hawaii. Counsel asserts that the affidavits establish that the applicant and his natural parents visit each other "often", such that his absence would cause them hardship. In both affidavits, however, only two visits are mentioned. Counsel also asserts that the applicant's natural mother is in bad health, but the only medical documentation on the record regarding her condition consists of two prescription labels for medication for high blood pressure. Counsel contends that the applicant's natural parents would experience extreme emotional hardship upon seeing the applicant and the applicant's daughter suffer as a result of their separation. However, the record contains no evidence that the applicant's biological parents would suffer to a greater degree than other family members of inadmissible individuals.

The record, reviewed in its entirety, does not support a finding that the applicant's biological or adoptive parents face extreme hardship if the applicant is removed. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.