



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: EL PASO, TX

Date: MAR 30 2007

IN RE:

Applicant:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record reflects that the applicant's Form I-130, Petition for Alien Relative (Form I-130 Petition) and Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485 Application) were denied by the district director, El Paso, Texas on January 7, 2005, due to the applicant's failure to establish that she was the bona fide spouse of a U.S. citizen. No appeal to the Form I-130 denial was filed with the Board of Immigration Appeals, and a Motion to Reopen the applicant's Form I-485 application was denied by the district director, El Paso, Texas on May 20, 2005. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied by the district director on May 20, 2005 for failure to establish that a qualifying family relationship exists.

In the present appeal the applicant again requests, through counsel, that her Form I-130 petition, and Form I-485 application be reopened. The district director declined to reopen the matter, and the Form I-601 appeal was forwarded to the AAO.

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

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.

The applicant does not dispute the district director's finding that she is inadmissible under section 212(a)(2)(A)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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.

In the present matter, the district director found the applicant had failed to establish that she was in a bona fide marriage with [REDACTED] a U.S. citizen. The record reflects that the applicant's Form I-130 petition was denied on this basis, and the decision was not appealed to the Board of Immigration Appeals. The applicant's Form I-485 application was also denied on this basis.

The regulation provides in pertinent part at 8 C.F.R. § 103.2(b)(1) that, “[a]n applicant or petitioner must establish eligibility for a requested immigration benefit.” The regulation provides further at 8 C.F.R. § 103.2(b)(8) that, “[i]f there is evidence of ineligibility in the record, an application or petition shall be denied on that basis. . . .” In the present matter, the record establishes that the applicant has failed to establish a bona fide marital relationship to a U.S. citizen or lawful permanent resident spouse, and the record contains no evidence to establish that the applicant is the daughter of a U.S. citizen or lawful permanent resident parent. Accordingly, the applicant has no qualifying family member for section 212(i) of the Act purposes. She is thus statutorily ineligible for section 212(i) relief, and her application must be denied.

It is noted that even if a bona fide marital relationship had been established between the applicant and [REDACTED] the present appeal would nevertheless have been denied based on the applicant’s failure to establish extreme hardship to [REDACTED]. The AAO notes that all of the assertions made in the applicant’s appeal are related to her request that her Form I-130 petition, and Form I-485 application be reopened. The applicant’s appeal contains no assertions or evidence of hardship that [REDACTED] would suffer if the applicant’s admission into the United States were denied. Although not mentioned on appeal, the AAO notes that the record contains an affidavit signed by [REDACTED] stating that: 1) he and the applicant have lived apart since their marriage due to her inability to come to the U.S. legally; 2) he is a disabled war veteran and needs the applicant to help him with rehabilitative efforts and as a companion. The record contains no detailed evidence, however, to establish what [REDACTED] rehabilitative needs are, or to establish that the applicant has, or would be able to help him with any rehabilitative efforts, and the record contains no other evidence of hardship to [REDACTED].

Section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on the qualifying family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. See *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968). The AAO finds that the totality of the evidence contained in the record fails to establish that [REDACTED] would suffer extreme hardship if the applicant’s Form I-601 application were denied.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that she is eligible for relief under section 212(i) of the Act. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.