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IN RE:



PETITION: 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 PETITIONER:



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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, _____ is a native and citizen of the Dominican Republic 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 falsely claiming United States citizenship so as to procure admission to the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Acting District Director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Acting District Director, dated March 6, 2006.* The applicant submitted a timely appeal.

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

(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 chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter . . . is inadmissible.

....

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRAIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record reflects that in a sworn statement signed by the applicant she admitted to presenting to an immigration inspector a Puerto Rican birth certificate and a driver's license that she purchased in an attempt to enter the United States in 1994. The record, the AAO finds, establishes that the applicant is inadmissible for falsely claiming U.S. citizenship in 1994.

Although the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, she is eligible to apply for a waiver under section 212(i) of the Act. The provision of IIRAIRA, which does not allow for a waiver of inadmissibility for a false claim to U.S. citizenship made on or after September 30, 1996, is not applied retroactively to the applicant.

A section 212(i) waiver of the bar to admission resulting from a 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. Hardship to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is the applicant's spouse, Mr. Oscar Agudelo. 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).

The record contains birth certificates, a marriage certificate, a naturalization certificate, income tax records, W-2 Forms, earnings statements, medical records, and other documents.

The birth certificates issued by the State of Florida shows the [REDACTED] children were born on February 18, 2000 and August 27, 2004.

The letter by [REDACTED] states that [REDACTED] who has been under his care since October 2004, was diagnosed with diabetes mellitus, type 2 (out of control), and hyperlipidemia; and receives daily medication. In a follow-up examination document, dated October 2, 2004, [REDACTED] indicates that Mr. [REDACTED] must take medication, diet, and modify his life style.

The February 26, 2002 letter by [REDACTED] with [REDACTED] conveys that [REDACTED] has been employed as a medical waste driver since January 29, 2001, working approximately 50 hours per week, 5 to 6 days each week, averaging \$720 to \$780 weekly. [REDACTED] states that [REDACTED] is paid based on productivity, not on an hourly wage.

The April 9, 2001 letter by [REDACTED] states that [REDACTED] current average pay is approximately \$1,260 bi-weekly.

The income tax records for 2001 reflect earnings of \$31,941 for [REDACTED]

On appeal, counsel states that the [REDACTED] children would experience extreme hardship if their mother were removed from the United States. Counsel states that [REDACTED] has diabetes and recent tension has caused an increase in his insulin dosage. Counsel states that [REDACTED] manages the household and helps her husband with everything related to his disease and that [REDACTED] health would deteriorate if he were to care for his children, control the diabetes, and work full-time without his wife's assistance.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the

case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

The record establishes that [REDACTED] would endure extreme hardship if he remains in the United States without the applicant.

[REDACTED] claims that he will experience extreme hardship if the applicant is no longer available to care for their two children, manage the household, and help with his disease. The AAO finds that given the nature of [REDACTED]'s medical problems and the documentation in the record of his condition, he would experience extreme hardship if he were to remain in the United States and care for his children who are seven and three years old and manage the household and his disease.

The record is sufficient to establish that [REDACTED] would experience extreme hardship if he joined his wife in the Dominican Republic.

The record reflects that [REDACTED] has been under the care of a physician since October 2004 for the treatment of diabetes mellitus, type 2 (out of control), and hyperlipidemia. Because of [REDACTED] health problems and need for ongoing treatment, in addition to the financial hardship he would experience in the Dominican Republic, the AAO finds that he would experience extreme hardship in the Dominican Republic, where the gross domestic product was approximately \$2,100 per capita in 2002, as shown in the U.S. Department of State's Country Reports on Human Rights Practices.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's family. The unfavorable factor in this matter is the applicant's misrepresentation. The AAO notes that the applicant does not appear to have committed any crimes.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violation, it finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.