



U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: FEB 27 2008

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:

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 sustained.

The applicant, [REDACTED], is a native and citizen of Columbia 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated May 11, 2005. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The record reflects that the applicant sought to enter the United States on July 16, 1976 by presenting to immigration inspectors a counterfeit nonimmigrant visa, and it shows that he pled guilty to violation of 18 U.S.C. § 1546. The AAO finds that the documentation in the record supports the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to gain admission into the United States by fraud or willfully misrepresenting a material fact to immigration officials.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his children are 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 his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's lawful permanent resident wife. 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 an affidavit from [REDACTED] letters from the applicant's children, income tax records, a marriage certificate, birth certificates, a letter from a clinical psychologist with the Department of Mental Health, and other documents. The AAO has carefully considered all of the documentation in the record in rendering this decision.

"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).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she 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.

The affidavit from [REDACTED] states that she has shared 28 years with the applicant who means the world to her. She states that she and her husband spent a lifetime in the United States, building their life here with their children and grandchild. She conveys that their two younger daughters are 14 and 19 years old and that she is very concerned about the impact her husband's case will have on her 14-year-old daughter as she attempted suicide in the past. She states that without her husband her life would be difficult emotionally and psychologically as he supports her, listens to her problems, and comforts her. She states that she is economically dependent on her husband and suffers anxiety and nervous attacks about his immigration situation.

The income tax records for 2002 reflect total income of \$17,901, which consisted of a profit of \$17,101 from [REDACTED]'s business and they reflect a daughter as a dependent.

The letters in the record from the applicant's son and daughters convey that they have a close relationship with their father.

The applicant's wife claims that she would experience financial hardship if she remained in the United States without her husband. The documentation in the record shows that the applicant provides the sole household income, which was \$17,901 in 2002. The record therefore supports a finding that the applicant's wife would experience extreme financial hardship in his absence.

Furthermore, the record demonstrates that the applicant's wife would experience extreme emotional hardship without the applicant. The November 19, 2003 letter from the clinical psychologist with the County of Los Angeles, Department of Mental Health, conveys that [REDACTED] was in psychological treatment due to suicidal ideation and high risk behavior to herself. The letter conveys that the [REDACTED] family was instrumental in helping their daughter through a very difficult time. The letter recommends that [REDACTED] "remain in the custody of both her parents as they are vital to her continued well-being."

The AAO finds that the applicant's wife would experience extreme hardship if she were to join her husband in Columbia.

The applicant's wife is concerned about the affect her husband's case will have on her U.S. citizen daughter [REDACTED], who is now 18 years old. [REDACTED] conveys that her husband has no family in Columbia and the AAO finds that the record indicates that the [REDACTED] family was instrumental in helping [REDACTED] during her crisis. The AAO therefore finds that the applicant's wife would experience extreme hardship if she joined her husband in Columbia and separated from her son and daughters, especially [REDACTED]. The AAO notes that no evidence in the record suggests that if [REDACTED] were to join her parents in Columbia she would be able to receive psychological treatment there should she again require such care.

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.

Thus, 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 under section 212(i) of the Act. 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 section 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 adverse considerations in the present case are the applicant's misrepresentation, his conviction under 18 U.S.C. § 1546 and subsequent deportation, and his initial unlawful entry and periods of unauthorized presence and employment.

The favorable factors in the present case are the applicant's family ties in the United States; the extreme hardship to the applicant's wife and U.S. citizen and lawful permanent resident children if he were removed; his stable employment through his business and payment of income taxes; letters from family attesting to the applicant's good character; and the applicant's long duration of residence in the country. The AAO notes that the applicant does not appear to have a criminal record, other than his conviction under 18 U.S.C. § 1546.

The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the applicant merits a waiver of inadmissibility.

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.