

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

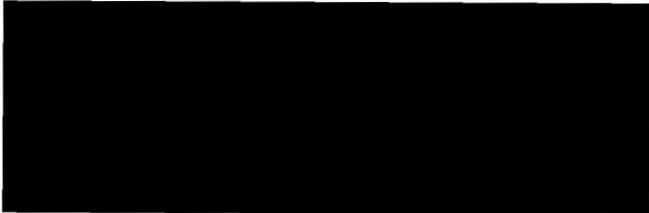
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



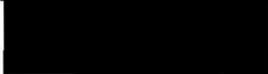
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H 2



FILE:



Office: VIENNA, AUSTRIA Date:

OCT 17 2008

IN RE:

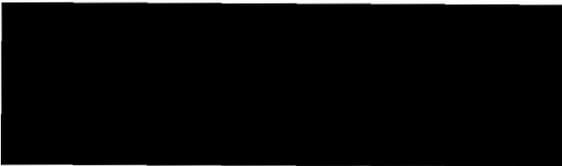
Applicant:



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 Acting Officer-In-Charge (OIC), Vienna, Austria, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Belarus 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 obtain a nonimmigrant tourist visa by presenting a forged letter from a United States hospital. The record indicates that the applicant is married to a lawful permanent resident of the United States and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). She is seeking 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 her lawful permanent resident husband and United States citizen daughter.

The Acting OIC found that the applicant failed to establish that extreme hardship would be imposed on her husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Acting Officer-In-Charge's Decision*, dated September 9, 2005.

On appeal, the applicant, through counsel, claims that “the applicant did not knowingly commit any fraud because she presented a document in a foreign language (English) that was provided to her from sources in the United States. Although she knew it was to be used to apply for a visitor’s visa, she knew neither the literal content of the letter nor the fact that the contents were not true.” *Attachment to Form I-290B*, filed October 3, 2005.

The record includes, but is not limited to, counsel’s brief, an affidavit from the applicant’s husband, and a warrant for the applicant’s son. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 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 [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...

The record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on March 14, 1999, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until September 14, 1999. On an unknown date, the applicant departed the United States. On November 15, 1999, the applicant applied for a nonimmigrant tourist visa in Belarus, by presenting a forged letter from a United States hospital which stated that the applicant's daughter was undergoing surgery and would need the applicant's assistance. On May 23, 2002, the applicant's United States daughter filed a Form I-130 on behalf of the applicant. On April 1, 2003, the applicant's Form I-130 was approved. On or about January 27, 2005, the applicant filed a Form I-601. On September 9, 2005, the Acting OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

Counsel contends that the Acting OIC erroneously determined that the applicant misrepresented herself on her first visa application, when she stated she was coming to the United States to visit her son. Counsel states "[t]here was never any intentional misrepresentation of the purpose of the [applicant's] first visit although there may have been some misunderstandings between the term 'son' and 'son in law' stated by a woman who does not speak English." *Counsel's Brief*, page 3, filed October 31, 2005. The AAO notes that the Acting OIC stated that "the applicant *may* have misrepresented herself more than once." *Acting Officer-In-Charge's Decision, supra* (emphasis added). Therefore, the Acting OIC did not make a final determination that the applicant misrepresented herself on her first nonimmigrant visa. Regarding the forged letter from a United States hospital, counsel claims that since the applicant "does not read English", she did "not even [know] the contents of the letter. She did not request the letter. She did not create the letter...It is not unreasonable to conclude that applicant had no knowledge of the contents of the letter." *Counsel's Brief, supra* at 4-5. The AAO finds that even though the applicant claims she did not understand the contents of the letter, she submitted a forged document in an attempt to obtain a nonimmigrant visa, and it is not the responsibility of the Service to determine if the applicant understands the documents she is submitting on her own behalf.

The AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel claims that the applicant's husband is suffering extreme hardship by being separated from the applicant. The AAO notes that counsel provided documentation that the criminal police in Belarus have issued a warrant for the arrest of the applicant's son. Counsel states "[t]he element that has not been factored into the decision is the effect of the son's desertion on the husband if he returns to Belarus. There have been repeated threatening visits by the police to the family residence in Belarus. It is clear why the husband would want to take refugee in the United States to escape this governmental harassment...Belarus is ruled by a Regime with a poor record of human rights." *Counsel's Brief, supra* at 7. The AAO notes that country conditions in Belarus have deteriorated and it is not unreasonable to assume that the applicant's husband may have problems with the government should he join the applicant in Belarus.

The record establishes that the applicant's spouse would suffer extreme hardship if he joins the applicant in Belarus. However, counsel did not establish that the applicant's husband would suffer extreme hardship if he stays in the United States without the applicant. Counsel states "[t]he relationship between the applicant and her permanent resident husband is a marriage of over 36 years and has produced two grown children...After 36 years of marriage, a couple is entwined emotionally; separation itself creates a hardship that is difficult to measure but certainly most reasonable people would consider a prolonged separation of a couple that has been together this long to be an extreme hardship. The husband would certainly feel terrible to see his partner suffer severe weight loss, a gastric ulcer, withdrawal, and to be on anti depressive medication." *Id.* at 6-7. The applicant's husband states the applicant "is going through a very difficult time and now when [he is] no longer by her side makes it unbearable...[His] greatest fear that [he] day by day [he is] loosing [sic] [his] dearest wife. She is already a completely different person

and [he is] afraid she will not last long while being separated from the rest of the family.” *Letter from [REDACTED]*, dated May 6, 2005. As noted above, hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s husband will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.