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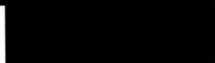
U.S. Citizenship
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FILE:



Office: PHOENIX, ARIZONA

Date: **SEP 16 2008**

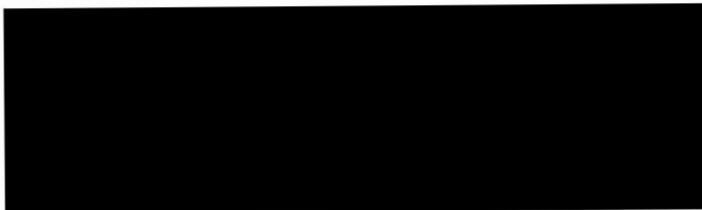
IN RE:

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. Wiemain, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, 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 El Salvador who was found to be inadmissible to the United States under 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's spouse, [REDACTED], is a lawful permanent resident of 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 the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Acting District Director*, dated February 3, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility

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 in 1994 the applicant attempted to gain admission into the United States from Guatemala City by presenting to an immigration inspector at the airport in Houston, Texas, an altered Salvadoran passport and visa that she purchased. She was charged with attempting to gain entry into the United States using an altered passport, and voluntarily returned to El Salvador. As shown in the Application for Waiver of Ground of Excludability, Form I-601, she entered the United States without inspection in May 1997, departing in July 2001 and returning in July 2001 on a V Visa. Based on the documentation in the record, the acting district director was correct in finding the applicant inadmissible under section 212(a)(6)(C) of the Act for using an altered passport and visa in order to gain admission into the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child 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 her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"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 spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in El Salvador. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains, among other documents, birth certificates, letters, an affidavit, income tax records, a marriage certificate, wage statements, vehicle insurance records, school records, bank statements, an approved Application for Temporary Protected Status, and photographs.

On appeal, counsel states that the applicant's husband and children would experience extreme economic hardship if the waiver application were denied because they would lose the applicant's income. He stated that the applicant's husband would experience extreme emotional hardship because he and his wife have been married for seven years and have never separated, and have purchased a house and automobiles for their family. Counsel indicates that [REDACTED] is needed to provide care for her children, including her daughter who is a lawful permanent resident. He states that her children are 13, 6, and 2 years old; and that the 2-year-old child has allergic rhinitis, sinusitis, tonsillitis, and adenoid hypertrophy. Counsel states that living in El Salvador is a dangerous proposition. Counsel states that the applicant's husband has a close relationship with his brother, who lives in Las Vegas, Nevada.

In his affidavit, [REDACTED] stated that they purchased a house after his wife started working in 2002. He stated that they would be unable to maintain their healthcare if his wife were removed from the country. He indicated that they do not have medical insurance in El Salvador, and would be unlikely to find a job to support themselves. He stated that he has no work experience in El Salvador and probably would not be hired for that reason. He stated that El Salvador has crime.

In her undated letter, the applicant describes the circumstances involving her attempted entry into the United States in 1994 and her later successful entry.

The letter by the applicant's daughter conveyed that El Salvador has a lot of violence and that she has a close relationship with her mother and does not want her to return to El Salvador. She stated that she does not wish to return to El Salvador because her sister and brother, who were born in the United States, live here and would not have a future in El Salvador.

The applicant and her husband are members of the parish, Prince of Peace Catholic Church. *Letter by [REDACTED] dated February 23, 2006.*

The applicant's son, who was born on August 20, 2003, was treated for allergic rhinitis, sinusitis, tonsillitis, and adenoid hypertrophy, and in 2004 underwent adenoidectomy to alleviate nasal obstructive symptoms. In 2005, he was treated for recurrent pharyngitis-tonsillitis and one episode of bronchitis. *Letter by [REDACTED] dated February 27, 2006.*

The income tax records for 2005 show gross income of \$46,744. Mr. [REDACTED]'s W-2 Form reflects income of \$26,367 and his wife's shows income of \$14,570 with Unifirst Corp.

The Mortgage Interest Statement indicates their monthly payment is \$846.

[REDACTED] is employed as a full-time kitchen worker with MGM Grand Hotel, earning \$12.80 per hour. *Confidential Employment Verification dated February 22, 2006.*

[REDACTED] is shown as employed with Mandalay Bay Resort & Casino since October 10, 2005 as a guest room attendant, earning \$12.75 per hour. *Letter by [REDACTED] dated December 7, 2005.*

The AAO finds that the record establishes extreme hardship to the applicant's spouse if he remained in the United States without the applicant. The loss of the applicant's income combined with the need to care for three small children, one with medical problems, cumulatively rises to the level of extreme hardship. Consequently, [REDACTED] has established extreme hardship to her husband if he were to remain in the United States without her.

The record is sufficient to establish that the applicant's husband would experience extreme hardship if he were to join his wife to live in El Salvador.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's

homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

██████████ indicated that it is unlikely that he will find employment in El Salvador and have medical insurance. The AAO notes that the applicant was granted Temporary Protected Status (TPS). TPS is granted to eligible nationals of designated countries suffering the effects of an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions. During the period for which a country has been designated TPS, beneficiaries may not be removed from the United States and are authorized to engage in employment. Because the Secretary of Homeland Security has designated El Salvador for TPS until March 9, 2009, the AAO finds that ██████████ would experience extreme hardship if he were to join his wife to live in El Salvador. See Federal Register / Vol. 72, No. 161 / Tuesday, August 21, 2007 / Notices.

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. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The favorable factors in this matter are the extreme hardship to the applicant's spouse and her U.S. citizen children and lawful permanent resident daughter, her four years of steady employment as shown by income tax records, and the passage of 14 years since she entered the United States illegally. The unfavorable factors in this matter are the applicant's use of an altered passport in an attempt to enter the United States, and her periods of unlawful presence here. The AAO notes that the record does not indicate that the applicant has any criminal convictions.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's use of an altered passport in an attempt to gain admission into the United States, her committing of this act is at least partially diminished by the fact that approximately 14 years have elapsed since then. The AAO finds that the hardship imposed on the applicant's family 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), the burden of establishing that the application merits approval 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. The waiver application is approved.