



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

H4

FILE:

Office: CHICAGO, IL

Date: JUN 15 2006

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B) and 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 Interim District Director, Chicago, Illinois. 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 Italy who was determined to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission to the United States by fraud or willful misrepresentation and for having been unlawfully present in the United States for more than one year. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated February 5, 2004.

On appeal, counsel contends that the decision of the interim district director was erroneous. Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and is only subject to the 10-year bar under section 212(a)(9)(B)(v) of the Act. Moreover, counsel states that the applicant and her spouse established that the applicant's spouse would suffer extreme hardship if the applicant departed from the United States. *Form I-290B*, dated March 9, 2004. In support of these assertions, counsel submits a brief; an affidavit of the applicant's spouse; a copy of a 2003 federal tax return for the applicant and her spouse; a letter from a teacher of the applicant's daughter and a letter from a mental health professional. The entire record was reviewed and considered in rendering a decision on the applicant's 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 Act is inadmissible.

Section 212(i) of the Act provides:

- (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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on several occasions as a nonimmigrant tourist from Italy, a visa waiver country. On each occasion, the applicant overstayed the 90-day period authorized under the visa waiver program and accrued unlawful presence in the United States. On April 25, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), however, she departed the United States without obtaining advance parole authorization and thereby abandoned her application. On May 2, 2003, the applicant filed a second Form I-485 application.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant therefore accrued unlawful presence for the periods that she remained in the United States unlawfully between April 1, 1997, the date of implementation of unlawful presence provisions under the Act, and May 2, 2003, the date of her proper filing of the Form I-485 application. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

In addition, the record reflects that on each occasion that the applicant entered the United States under the visa waiver program she represented herself to be a nonimmigrant visitor to the United States when, in fact, she intended to reside in the United States indefinitely with her United States citizen spouse and, subsequently, her United States citizen children. These representations constitute misrepresentations of material fact rendering the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes

that while the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act barred her from seeking admission within ten years of the date of her last departure, inadmissibility under section 212(a)(6)(C)(i) of the Act results in a permanent bar to admission absent approval of an application for waiver.

Section 212(a)(9)(B)(v) and 212(i) waivers of the bar to admission resulting from violations of sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act respectively are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Italy in order to remain with the applicant. Counsel indicates that the applicant's spouse grew up in the United States and that the only time that he resided outside of his hometown was during the four years that he served in the military. *Letter from* [REDACTED] dated March 8, 2004. Counsel states that the father and two brothers of the applicant's spouse live in the same area as the applicant and the applicant's spouse and that relocation to Italy would impose hardship on the applicant's spouse and children because it would separate them from their immediate family and support network. *Id.* Counsel explains that one of the applicant's children requires special education and that she will be unable to obtain special assistance in Italy, a country where she does not speak the language, imposing additional hardship on the applicant's spouse. *Id.* Counsel indicates that the applicant's spouse would likely be unable to obtain employment in Italy owing to the high unemployment rate. *Id.* Counsel claims that the unemployment rate in Italy is approximately 40%. *Id.* The AAO notes that the record fails to offer evidence supporting counsel's contentions regarding country conditions in Italy and fails to cite sources for counsel's statistics regarding the Italian economy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although counsel indicates that the applicant's spouse researched the possibility of employment in Italy and found it was "untenable", the record fails to contain documentation substantiating his findings. *Id.*

Moreover, the record fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in the absence of the applicant in order to maintain proximity to family members, access

to special education services for his daughter and his current employment. Counsel contends that the applicant's spouse will be unable to sustain two households based on his income in the United States. *Id.* The record fails to provide information pertaining to the cost of living in Italy on which the AAO can base a finding of extreme financial hardship. In addition, the record fails to establish that the applicant will be unable to obtain employment in a location outside of the United States in order to provide for her own financial maintenance if she is separated from her spouse.

Counsel provides a letter from a licensed clinical social worker to support the contention that the applicant's spouse would suffer emotional and psychological hardship as a result of separation from the applicant. *See Letter from [REDACTED] LCSW, CADDC, dated March 3, 2004.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the therapist. *Id.* ("I am writing regarding [the applicant's spouse] who has attended an Intake Interview with me...It is my understanding that the precipitant to his scheduling the interview is the possible deportation of his wife..."). The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted letter are based on a single interview and do not reflect the insight and elaboration commensurate with an established relationship with a therapist, thereby rendering the therapist's findings speculative and diminishing the letter's value to a determination of extreme hardship in the instant application. The record does not establish that the applicant's spouse possesses a history of mental health issues or that he will experience difficulty above or beyond the usual difficulties associated with separation from a loved one as a result of the applicant's inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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, however, 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 sections 212(i) and 212(a)(9)(B) 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.