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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: JUL 12 2006

IN RE: [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:

[redacted]

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 District Director, Chicago, Illinois, denied the waiver application 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 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Amerasian, Widow or Special Immigrant (Form I-360). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 31, 2004.

The record reflects that, on April 22, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's then U.S. citizen husband, [redacted]. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office on May 27, 1998. The applicant admitted that she had procured admission to the United States by presenting a Venezuelan passport belonging to another in 1984. On June 2, 1998, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On October 15, 2001, the applicant filed the Form I-360 as the battered spouse of a U.S. citizen. On December 26, 2001, the applicant and her husband's divorce was finalized. On March 18, 2003, the Form I-360 was approved.

On appeal, counsel contends that the district director applied the incorrect standard of "exceptional and extremely unusual hardship" in determining whether the applicant had established that she qualified for a section 212(i) of the Act waiver and failed to consider the fact that, as a victim of domestic abuse, the applicant would not be able to access resources in the Dominican Republic. *See Applicant's Brief,* dated May 25, 2004. In support of her contentions, counsel submitted only the above-referenced brief. Counsel contends that the applicant's removal from the United States would cause extreme hardship to the applicant. The entire record was considered in rendering this decision.

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

Section 212(i) of the Act provides that:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

> (iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--
>
> > (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
> >
> > (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien--
>
> > (aa)(AA) who is the spouse of a citizen of the United States;

The applicant's Form I-360 was approved for her self-petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved Form I-360, the applicant must demonstrate extreme hardship to herself. 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 concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First analyzed is the financial impact of the applicant's departure from the United States. The applicant, in her affidavit, asserts that her two grown children, who are both natives and citizens of the Dominican Republic and unemployed due to the economy in the Dominican Republic, would be adversely affected financially by the applicant return to the Dominican Republic because she currently provides them with income from her employment in the United States. Unfortunately, the applicant's grown children are not qualifying family members. The applicant does not have any qualifying relatives who would be adversely affected financially by her return to the Dominican Republic.

The next *Cervantes* factor is country conditions in the Dominican Republic. Counsel's brief cites the 2002 and 2003 United States Department of State Country Reports on Human Rights Practices for the Dominican Republic and the 2003 World Bank Poverty Report. According to the reports, approximately 25 percent of the national population lives below the poverty line and there was a 16.1 percent or more unemployment rate. Violence against women and domestic abuse are also listed as problems, indicating that 40 percent of women and children were victims of domestic violence with at least 15 women dying per month from domestic abuse with no shelters or resources for battered women. The applicant stated that her two grown children have been unable to find jobs and she would have difficulty finding a job in the Dominican Republic. Clearly, if the applicant moved to the Dominican Republic, her salary would not be comparable to what she earns in the United States. Counsel asserts that the applicant is currently employed with Casa Central and works with other victims of domestic abuse. Counsel contends that the applicant's work helps her to cope with her own domestic situation. Counsel asserts that the applicant has worked diligently to reverse her own cycle of abuse and heal emotionally. Documentation in the record indicates that the applicant has received domestic abuse counseling from her local Pastor since 2000 and has also worked with Casa Central since 2001. Counsel contends that the applicant would not only suffer extreme financial but also extreme emotional hardship should she return to the Dominican Republic because her entire source of support in relation to her domestic abuse is located in the United States and there are no such resources in the Dominican Republic.

Another *Cervantes* factor is significant health conditions. The applicant, in her affidavits, states that she has received treatment for headaches related to the stress surrounding her domestic situation. However, there is no evidence that she currently receives treatment or that such treatment would be unavailable in the Dominican Republic. There is evidence in the record to suggest that the applicant suffers from the psychological impact of her abusive relationship and has been receiving treatment in the form of counseling from her local Pastor and her involvement with Casa Central. As discussed above, the applicant would not have access to such resources or alternative resources in the Dominican Republic.

The final Cervantes factor is family ties in the United States and the Dominican Republic. The record reflects that the applicant has two U.S. citizen brothers who reside in New York City, New York, whom she visits on a regular basis. The applicant has two grown children in the Dominican Republic.

The applicant survived an abusive marriage and has lived in the United States for over 20 years. She has a steady job. Returning the applicant to the Dominican Republic, where she and her two grown children would live in poverty and would be unable to receive assistance in regard to her past domestic situation, would create hardship to her. The totality of the record demonstrates that the applicant would suffer extreme hardship if she is removed to the Dominican Republic.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant, the passage of more than 20 years since the applicant's immigration violation, letters in support of the applicant's character, and the applicant's employment history and involvement in community activities. The adverse factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in obtaining admission to the United States. The favorable factors outweigh the adverse factors; accordingly, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for an 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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.