

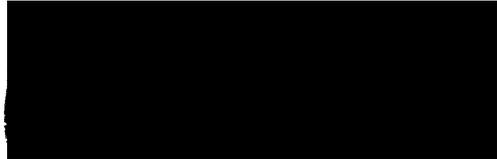
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U.S. Citizenship
and Immigration
Services

HA
MAR 15 2005



FILE: [Redacted] Office: VIENNA, AUSTRIA Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation in July 1995. The applicant is the son of lawful permanent resident (LPR) parents and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the application accordingly. On appeal, the applicant reiterates his previous contentions that the family separation causes his parents great sorrow. The applicant submits a letter written by his sister in which she indicates that the family would like to live together in the United States.

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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his LPR parents.

In addition to significant amendments made to the Act in 1996, by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29,

1990. Section 274C(a) states that it is unlawful for any person or entity knowingly “[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act.” Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including “impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name”. *See 18 U.S.C. § 1546.*

The Board of Immigration Appeals (“Board”) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record reflects that the applicant attempted to enter the United States in 1995 using an alien registration card of another individual. The applicant is 31 years old and resides in Poland, while his parents and siblings have resided in the United States for many years. The record contains a statement by the applicant’s father in which he stated that, due to the applicant’s inadmissibility, he and the applicant’s mother suffered from stress and depression and required psychiatric treatment. The record contains no documentation in support of this assertion. The applicant writes on appeal that he and his family would like to live together again. There is no documentation on the record, however, that establishes that the family separation is causing the applicant’s parents to suffer any type of extreme hardship.

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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his lawful permanent resident parents would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.