



U.S. Citizenship
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FILE:



Office: LOS ANGELES, CALIFORNIA

Date: SEP 26 2005

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 the Philippines. The applicant was found inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is the spouse of a U.S. citizen and the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse, and the application was denied accordingly. On appeal, counsel asserts that the district director abused her discretion in failing to consider all the hardship factors, in particular the separation of the applicant from her husband, and in failing to address all the issues presented in the application for the waiver. Counsel also contends that the pre-IIRIRA standard regarding waiver eligibility should be applied in the instant case. The AAO has reviewed the entire record and concurs with the district director's decision to deny this application.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's use of a passport with another person's name in order to procure admission into the United States in 1992. On appeal, counsel does not address this incident of material misrepresentation; rather, counsel discusses the applicant's failure to reveal a prior visa denial when applying for a U.S. visa at the consulate. As this was not the basis for the applicant's inadmissibility, the materiality of the applicant's failure to mention a visa denial is irrelevant to this analysis. What is relevant is the fact that the applicant entered the United States using a name that was not hers. Misrepresentation of identity is material in that it cuts off all avenues of obtaining information regarding the individual.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien herself is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

Counsel states that the district director failed to consider and address all the hardship factors presented. In her decision, however, the district director referred to the various concerns raised by the applicant's husband in the

waiver application. It does not appear that the district director failed to take into consideration the issues raised in the waiver application.

Counsel asserts that the application should be considered pursuant to standards existing prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (1996), and that the district director erred in applying § 212(i) waiver standards developed after IIRIRA was enacted. Counsel makes this contention, because the applicant’s conduct occurred prior to IIRIRA. Counsel’s assertion is unpersuasive.

In the Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 563-65 (BIA 1999), the Board held that:

[T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General’s, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.

....

[W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

If current § 212(i) standards are to be applied to cases pending before the enactment of the IIRIRA, as the BIA made clear in the above holding, then current § 212(i) standards also apply to the applicant’s case.

Counsel also notes that the district director did not consider the hardship factors discussed by the BIA in *Matter of Cervantes-Gonzalez, Id.* In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 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 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).

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).

On appeal, counsel contends that the applicant’s husband, who is originally from the Philippines, cannot return to that country in order to accompany the applicant, because he would be unable to adjust to the

lifestyle or climate there. Counsel also states that the level of medical care available in the Philippines is inferior to U.S. standards, and that the applicant's husband would not earn enough money in the Philippines to maintain himself. The applicant's husband is 44 years old, and there is no evidence on the record that he suffers from any specific medical problems. There is also no evidence that the applicant's husband would suffer extreme hardship upon returning to his native land on account of the difficulties inherent in such a readjustment. Finally, the record does not establish that the applicant's husband would be unable to find employment in the Philippines.

Counsel also states that the applicant's husband would suffer financial and emotional hardship if he remains in the United States without the applicant. The record does not establish that the applicant would be unable to contribute to the family budget from a location outside the United States, or that her departure would cause the applicant to become unable to meet his financial needs. The record also does not support the claim that the applicant's husband would suffer greater than usual emotional hardship due to a separation from the applicant.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record does not support a finding that the applicant's spouse faces extreme hardship if the applicant is removed. Rather, the evidence shows that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in some type of hardship, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.