

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CALIFORNIA

Date:

JUN 28 2006

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)

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 waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Great Britain who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust her status to that of lawful permanent resident (LPR); however, she was found to be inadmissible to the United States pursuant to §§ 212(a)(6)(C)(i) and (a)(9)(B)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(I). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erroneously enumerated five occasions on which the applicant supposedly misrepresented her intent in order to gain admittance to the United States, and that CIS inappropriately considered the fact that the applicant was engaged in unauthorized employment in finding her to be inadmissible. Counsel also contends that CIS abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. The entire record was reviewed and considered in rendering this decision.

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 procurement of admission to the United States, on at least one occasion, under the visa waiver program, when the applicant was not a simple visitor but was residing and working in this country. The applicant acknowledges having misrepresented her intent in order to enter the United States on June 9, 1998 and December 29, 2000. The five additional entry dates listed in the denial decision appear not to pertain to this applicant; however, it is noted that the applicant appears to have misrepresented the nature of her stay in the United States on at least one other occasion. She entered under the visa waiver program on December 16, 1997, yet according to her Form G-325A, she had been living in San Francisco since June 1997. Moreover, the applicant began unauthorized employment in January 1998, just weeks after her arrival as a visitor. The totality of these circumstances indicates misrepresentation in order to gain admittance on December 16, 1997.

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 or her stepchild 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.

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 [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.

Counsel asserts that CIS erred in considering the applicant's unauthorized employment; however, when the applicant began to work in this country without authorization, she violated the provisions of the visa waiver program and was thus no longer in status as of January 1998. Moreover, the applicant was unlawfully present in the United States over one year between her December 2000 entry and the date she submitted her application to adjust status (Form I-485) on June 25, 2002. The applicant's most recent departure from the United States occurred on April 4, 2004, and she seeks to adjust her status less than ten years from that date. The applicant is therefore inadmissible pursuant to § 212(a)(9)(B)(i)(II) of the Act.

It must be noted that while the bar resulting from inadmissibility under § 212(a)(9)(B)(i)(II) prevents the applicant from seeking admission for only ten years from her last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is permanent. The hardship standard the applicant must meet is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

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. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to her U.S. citizen spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose

would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, because the applicant has failed to establish extreme hardship to her husband, it does not matter whether she entered the United States through misrepresentation once or numerous times, or how long over one year she remained unlawfully, because no weighing of equities is necessary.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined 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 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, 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. *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).

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). *Perez v. INS, supra*, defined “extreme hardship” as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal.

Counsel contends that the applicant’s spouse would suffer extreme hardship as a result of relocating to Ireland to remain with the applicant, as all of his immediate family, including his daughter, reside in the United States. Counsel points out that the applicant’s ex-wife, per the included affidavit, will not allow their child to leave the United States; hence, a relocation to Ireland would substantially limit the amount of time the applicant’s husband would be able to spend with his daughter. Unfortunately, separation from children is not an uncommon consequence of the removal of one of the parents, and in order to qualify for the waiver, the record must show that the hardship suffered goes beyond that which is commonly encountered in similar

situations. There is no evidence on the record that the applicant's husband would suffer to a greater extent than others in his situation.

Counsel also maintains that if the applicant's husband leaves the United States, he will lose his financial aid package and will be unable to continue his studies at University of California. It appears that the applicant's husband was admitted to the University in 2002. Under normal circumstances, he would graduate by the date of this decision; hence, the applicant's husband would not suffer the claimed detriment with respect to his education should he choose to relocate to Ireland. Counsel also asserts that the applicant's husband, who works part time while attending college, would be obliged to support the applicant in Ireland. The latter claim is unsupported by the evidence, as there is no basis upon which to conclude that the applicant would be unable to support herself and contribute to the family's finances from a location outside the United States.

If, on the other hand, the applicant's husband remains in the United States without the applicant, counsel asserts that he would suffer emotionally due to the separation from his spouse. While the AAO acknowledges the negativity of such circumstances, it must be again pointed out that anxiety and sadness very often accompany a separation from family members. The evidence on the record does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United States.

In proceedings for application for waiver of grounds of inadmissibility under § 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.