



U.S. Citizenship
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FILE:

Office: NEW YORK, NY

Date: **MAY 11 2006**

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The motion to reopen the waiver application was denied by the District Director, New York, NY, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ghana 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 having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 with her U.S. citizen spouse and children.

The his initial decision the district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative and denied the waiver accordingly. *Decision of the District Director*, not dated. In his denial of the application's motion to reopen the waiver application the district director found that the applicant offered little or no new information and denied the application accordingly. *Decision of the District Director*, dated August 28, 2004.

On appeal, counsel asserts that the applicant will suffer extreme hardship in the form of health concerns, financial hardships and emotional separation as a result of his wife's inadmissibility to the United States. *Counsel's Appeals Brief*, dated October 13, 2004.

The record includes an affidavit from the applicant's husband; a report from a certified social worker; a letter from [REDACTED] 2003 joint tax returns; the applicant and her spouse's monthly budget; various articles concerning the country conditions in Ghana; and statements from the applicant's spouse's immediate family. The entire record was considered in rendering this decision.

The record reflects that in August 1996, the applicant used a passport and visitor visa with the fraudulent name of "Nana Abena Serwaaa" to procure entry into 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:

- (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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences or her children experience upon separation is irrelevant to section 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 Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of the departure of the applicant from the United States. The applicant submitted a letter from his doctor stating that he requires regular physical examinations and medications as he suffers from internal bleeding, asthma, allergic rhinitis and high blood pressure. The applicant's spouse states that he requires the help of the applicant to maintain his health and medications.

In addition, the applicant submitted documentation showing that he would suffer financially if the applicant were removed from the United States. The applicant's spouse asserts that without the applicant's income the family would not be able to maintain their well-being. The applicant and her spouse have an infant daughter. The applicant works 30 hours per week, from 11:00pm to 7:00am as a nurse's aid for \$10.75 an hour. *Affidavit from applicant*, dated October 12, 2004. The applicant submitted her nurse's aid certification card to support her assertions. The applicant's spouse works long hours during the day while his wife is not working. The applicant submitted his joint tax return for 2003 showing an income of \$37, 429 for the year. He also submitted a monthly budget showing expenses of \$3, 040. He asserts that without his wife he would have no one to provide childcare and without her income he could not afford to pay for outside childcare. Furthermore, the record indicates that the applicant's spouse's family does not live in close proximity to Watervliet, NY. His parents live in New York City and relying on him for financial support. They would not be able to help him financially or help with childcare. Therefore, because the spouse relies on the applicant to help with maintaining his health and on the applicant's income for basic necessities, the applicant has established that her spouse would suffer extreme hardship as a result of her being removed from the United States.

Although the applicant has established that her spouse will suffer extreme hardship as a result of her removal from the United States, she must also establish that her spouse will suffer extreme hardship as a result of relocating to Ghana. The country condition reports submitted by the applicant show that Ghana has a 44.8% poverty rate of people living below one dollar a day. The applicant's spouse would not be able to obtain medical care for his various health problems and would not be able to find employment in his field. Taking

into consideration the health problems of the applicant's spouse, his family ties to the United States, and the country conditions information submitted for Ghana the applicant has established that he would suffer extreme hardship if he were to relocate to Ghana with the applicant.

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's spouse, the absence of any criminal record, the passage of almost 10 years since the applicant's immigration violation and the fact that the applicant was only 19 years old at the time of this violation. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO finds that the hardship imposed on the applicant's spouse as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for 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 now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.