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Services

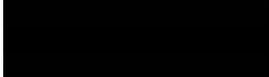
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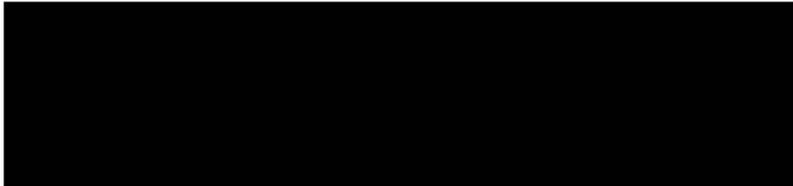
OCT 19 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, AZ, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Romania who was found to be 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 procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen wife.

The district director concluded that a review of the documentation in the record, when considered in its totality, reflects that the applicant failed to show that a qualifying relative would suffer extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated November 9, 2004.

On appeal, counsel asserts that it is undeniable that the applicant's spouse would suffer tremendous hardship if the applicant's waiver was denied. *Counsel's Appeal's Brief*, dated January 3, 2005.

The record indicates that on July 1, 2003, during the applicant's adjustment interview, he testified that he used a German passport that was not his own in order to gain entry into the United States under the visa waiver program.

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) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Romania or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states that she feels she would suffer extreme hardship raising her child alone and without the applicant. The AAO notes that counsel submitted evidence showing that the applicant's spouse was pregnant with a due date of September 2005. In his brief, counsel states that the applicant's spouse suffers from scoliosis, which restricts her movement and severe endometriosis, which causes her a lot of pain. The applicant's spouse states that she cannot work because of her condition and had an operation for her endometriosis in 2002. She states that she could not survive emotionally or financially without the applicant. As a result of the chronic pain she suffers she quit her job and started a home care business with the applicant. She explains that there are days where she has so much pain from the endometriosis she cannot get out of bed and she relies on the applicant to take care of her and to run their business. The applicant's spouse submitted a letter from her doctor, [REDACTED] dated August 26, 2004. [REDACTED] states that the applicant's spouse has been a patient of his since August 2002 and has been diagnosed with severe endometriosis. He states that because of this condition she suffers a great deal of pain and discomfort [REDACTED] states that he operated on the applicant's spouse in September 2002 and continues to monitor her condition. He explains that the applicant's spouse feels a little better now, but still experiences periodic pain. He asserts that endometriosis cannot be cured and that the scar tissue that was removed in her surgery has the potential to grow again, causing more extreme pain. The applicant's spouse also submitted a letter from the doctor treating her scoliosis. [REDACTED] states in his letter dated August 24, 2004 that the applicant's spouse is always on pain medication for her back and requires the assistance of the applicant. Due to the severe pain associated with the applicant's spouse's ailments and the chronic nature of her ailments, which requires the regular assistance of the applicant, the AAO finds that the applicant has established his spouse would suffer extreme hardship as a result of his removal.

Furthermore, the applicant's spouse states in her affidavit that she would suffer extreme hardship as a result of relocating to Romania. She states that they would have no family support in Romania, because her parents live in the United States and the applicant is not close with his family in Romania. She states that her parents are elderly and she does not want to separate from them. She also states that the situation in Romania is difficult. There are small salaries and a lack of jobs. Counsel submitted a Consular Information Sheet for Romania, dated January 3, 2005. The Information sheet states that the medical facilities in Romania are not up to Western standards and basic medical supplies are limited. The AAO finds that because of the medical care required by the applicant's spouse and the lack of appropriate medical facilities in Romania, it would be an extreme hardship for the applicant's spouse to relocate to Romania.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the misrepresentation made by the applicant to enter the United States and his illegal status in the United States.

The favorable factors in the present case are the extreme hardship to the applicant's wife, the lack of any criminal record and numerous letters of recommendation attesting to the applicant's good moral character from family friends, neighbors, the pastor of his church and a client from his business.

Thus, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility 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.