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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK, NEW JERSEY (CHERRY HILL) Date: APR 04 2008

IN RE:

Applicant:



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, Newark, New Jersey (Cherry Hill), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Columbia 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated November 2, 2005. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that in 1997 the applicant gained admission into the United States using a photo substituted Venezuelan passport in the name [REDACTED]

Based on the documentation in the record, the AAO finds that the applicant inadmissible under section 212(a)(6)(C) of the Act for gaining admission into the United States by misrepresenting his true identity to a U.S. immigration inspector.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s wife must be established in the event that she joins the applicant, and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel states that the applicant is 63 years old and has lived, worked, and paid taxes since his arrival in 1997. He states that the applicant’s wife was married to the applicant prior to the act of misrepresentation that rendered him inadmissible. Counsel states that the applicant’s spouse has medical conditions including depression, and he refers to letters written by physicians to show the applicant is needed to assist his wife. Counsel states that in Columbia the applicant’s wife would not have the same level of care. Counsel states that “both the applicant and his spouse have strong financial ties to this country in that the applicant supports his spouse and is instrumental to her continued well being.”

The undated letter by [REDACTED], conveys that he has been the physician for the applicant’s wife for the last three years and that she has diabetes, arthritis, hypertension, asthma, severe degenerative joint disease, and depression. He states that the applicant’s wife requires her husband’s attendance for her medical needs. He states that her condition has worsened over the past three years. [REDACTED] states that the applicant’s wife takes Diovan, 160 mg 1 tablet a day; glyburide 5 mg; metformin 500 mg; percocets every four hours as needed for pain; and Zolof 50 mg. He states that the medications are given to his patient by her spouse in a timely fashion and that he believes the departure of the applicant from the country would have a bad medical impact on his patient, as she is dependent upon her husband financially and medically. He states that the applicant’s wife will require future treatment, including regular office visits at least once a month to keep her “at bay with Asthma Exacerbation and future hospitalization.”

The October 19, 2005 letter by [REDACTED], M.D., conveys that he has been following the medical condition of the applicant’s wife since 2002 when she was diagnosed with severe bronchial asthma. He states that she receives monthly injections of anti-immunoglobulin treatment and takes oral inhalation medications,

which treatments he states she will continue indefinitely. He states that the applicant has transported his wife to and from medical appointments.

The July 27, 2005 letter by [REDACTED], M.D, is similar in context to his October 19, 2005 letter.

The July 28, 2005 letter by [REDACTED] M.D., states that the applicant's wife is under his medical care and that she has severe headaches, back pain, arthritis, and depression.

The affidavit dated October 20, 2005 by the applicant's wife states that she is married to the applicant and they have three grown children, and grandchildren who were born in the United States. She states that she depends upon her husband financially and medically, that she cannot depend upon her children as they are married and have children of their own to care for, and that she does not earn enough money to support herself. She states that her health has worsened over the past three years.

The I-601 waiver application reflects that the applicant and his wife and his daughter, who is 39 years old, live at the same address.

The July 20, 2005 affidavit by the applicant conveys that his wife depends on him for emotional support and he is her caregiver. He states that she is not able to leave the United States with him because of her respiratory condition.

The affidavit of the same date by the applicant's wife is similar in content to that of her husband's.

The July 22, 2005 affidavit by the applicant's daughter states that her father takes care of her mother and her children while she is at work.

The record reflects that the applicant and his wife were previously divorced, but it does not indicate when this occurred. It shows that they married on June 25, 2004.

The February 24, 2005 letter by [REDACTED] conveys that the applicant, who works a 40-hour week, has been employed there since August 18, 2004, earning \$8.72 per hour.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record establishes that the applicant's wife would experience extreme hardship if she were to join the applicant to live in Columbia.

The conditions in Columbia, the country where the applicant's wife would join her husband, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Because the record conveys that the applicant's wife, who is 59 years of age, has serious health conditions for which she receives ongoing treatment, the AAO finds that she would experience extreme hardship if she were to join her husband to live in Columbia.

The record fails to show that the applicant's wife would experience extreme hardship if she were to remain in the United States without him.

The record conveys that the applicant and his wife live with their daughter. Although the applicant's wife indicates that she relies on her husband for financial support, no documentation such as monthly household expenses, income tax returns, and W-2 Forms have been submitted to establish this. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the letters by the treating physicians convey that the applicant provides daily care for his wife, including transporting her to medical appointments, there is no indication that the health problems of the applicant's wife limit her ability to care for herself such as taking medication and driving. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that the applicant works a 40-hour week.

It is noted that the submitted Biographic Information and Petition for Alien Relative fail to indicate the date the marriage between the applicant and his wife ended, even though the documents solicit this information. It is further noted that the record shows the applicant and his wife as married for the second time on June 25, 2004. It is unclear how the applicant's spouse took care of her financial and medical problems during the period between the divorce and remarriage.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant's wife were to remain in the United States without her husband. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.