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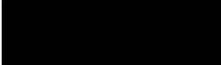
U.S. Citizenship
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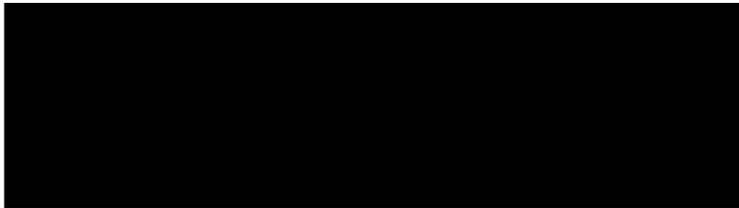
Date: DEC 04 2008

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.


John F. Grisson, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Germany 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 entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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 her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 18, 2008.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from family members and friends; statements from the applicant and her spouse; a statement from the applicant's spouse's psychiatrist; a statement from the applicant's spouse's physician; documents regarding a settlement agreement with an attorney previously retained by the applicant's spouse; statements from business associates of the applicant's spouse; a statement from the former teacher of the applicant's spouse; and a letter from [REDACTED] Member of Congress. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant was engaged to her U.S. citizen spouse when she attempted to gain admission to the United States at the International Airport in Vancouver, British Columbia on February 22,

2005. *Memorandum Report, United States Embassy, Panama*. When questioned by the airport inspector as to the purpose of her visit, the applicant declared that she was intending to visit her fiancé. *Id.* As a result, she was denied entry. *Id.* The applicant's spouse sought the assistance of an attorney who advised the applicant to gain admission to the United States by crossing the Canadian border by land.¹ *Id.* On February 27, 2005, the applicant accompanied some friends who were crossing the Canadian border by land. *Id.* When questioned at the port of entry, the applicant made false statements regarding her previous attempt to gain admission to the United States and what her current intent was. *Form I-213, Record of Deportable/Inadmissible Alien*. The applicant was expeditiously removed. *Id.*; *Notice to Alien Ordered Removed/Departure Verification*. As such, the AAO finds the applicant to be inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The applicant is also inadmissible under section 212(a)(9)(B) of the Act for having been unlawfully present in the United States from December 2001 until January 2006. *Form G-325A, Biographic Information sheet, for the applicant*.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act and a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bars impose an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i) or 212(a)(9)(B)(i)(II). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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 family ties to 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.

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals.

¹ The AAO acknowledges the documentation showing a settlement paid to the applicant's spouse by the attorney for allegedly providing this advice.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Germany² or in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request.

If the applicant's spouse relocates to Germany, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born and raised in the United States. *Birth certificate for the applicant's spouse; Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant's spouse has no family or cultural ties to Germany. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant's spouse has a medical history of anxiety, depression, and post traumatic stress disorder. *Statement from [REDACTED] M.D., dated October 3, 2008; Statement from [REDACTED] M.D., dated July 2, 2008.* The applicant's spouse suffered a series of traumatic incidents and has had recurrent suicidal thoughts. *Statement from the applicant's spouse, dated October 6, 2008; Statement from the mother of the applicant's spouse, dated September 8, 2008; Statement from the sister of the applicant's spouse, dated October 9, 2008. Letter from [REDACTED] teacher, Malibu High School, dated October 7, 2008.* The applicant's spouse was treated by a psychiatrist from July 1999 until December 2005 and was placed on antidepressants and anti-anxiety medications from August 1999 until March 2003. *Statement from [REDACTED] M.D., dated July 2, 2008.* The applicant spouse's psychiatrist acknowledges that the applicant's spouse is currently under significant stress and duress because of the applicant's immigration issues. *Id.* He notes that the applicant's spouse is undergoing a return of many of the symptoms that first brought him to psychotherapy in 1999. *Id.* Additionally, the applicant's spouse's physician has recommended treatment with medication and counseling. *Statement from [REDACTED] M.D., dated October 3, 2008.* The AAO acknowledges the difficulties in adjusting to a different culture with no family ties, and how these difficulties may be exacerbated for someone who has a history of depression and anxiety. The AAO also notes that the applicant has a longstanding established relationship with his psychiatrist in the United States and that it would be difficult to replicate this in Germany, as the applicant received continuous therapy with this one psychiatrist over the course of many years. When looking at the aforementioned factors, specifically the lack of family and cultural ties in Germany as well as the significant health condition of the applicant's spouse, the AAO finds that the applicant has demonstrated that her spouse would suffer extreme hardship if he were to reside in Germany.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The father of the applicant's spouse is deceased and his mother lives in Venice, California. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* As previously noted, the applicant's spouse has a history of depression and anxiety, and his physician has currently recommended he be treated with medication and be placed back in counseling. *Statement from [REDACTED] M.D., dated July 2, 2008; Statement from [REDACTED] M.D., dated October 3, 2008.* According to the uncle of the applicant's spouse, the family of the applicant's spouse has been plagued by acute depression for generations with numerous family members having committed suicide. *Statement from the uncle of the applicant's spouse, dated October 2, 2008.* The applicant observed that after her immigration problems began, her spouse

² The AAO notes that the applicant currently lives in Panama. As the record does not document that the applicant has any type of legal status in Panama, the extreme hardship analysis will be based on the applicant's native country of Germany.

“plunged into the darkest depths of depression.” *Statement from the applicant*, dated October 6, 2008. She could feel that he was slipping further into depression because she was not there. *Id.* She asserts her husband is perishing right in front of her eyes, and notes that he frequently refuses to eat and has been increasing his consumption of alcohol. *Id.* The applicant’s immigration issues have caused emotional and psychological struggles for her spouse and have impacted his employment. *Letter from the business partner of the applicant’s spouse, ██████████ President, Ocean Choice Seafood, Co.*, dated October 7, 2008. As a result of his absenteeism from work and his inability to focus, the company of the applicant’s spouse has lost a multi-million dollar account. *Id.* According to the mother of the applicant’s spouse, his income is slipping and he has had to let go of the home he shared with the applicant. *Statement from the mother of the applicant’s spouse*, dated September 8, 2008. When looking at the aforementioned factors, particularly the significant health condition of the applicant’s spouse, the applicant’s spouse’s family disposition towards depression and history of suicide, the recurrence of the applicant’s spouse’s depressive symptoms and its impact upon his employment, the AAO finds that the applicant has demonstrated that her spouse would suffer extreme hardship if he were to reside in the United States without her.

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 applicant’s prior misrepresentation for which she now seeks a waiver, her prior removal resulting in her inadmissibility under section 212(a)(9)(A) of the Act,³ and the applicant’s unlawful presence from December 2001 until January 2006.

The favorable and mitigating factors are the applicant’s U.S. citizen spouse, the approved immigrant visa petition benefiting her, the extreme hardship to her spouse if she were refused admission and her supportive relationship with her spouse.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when 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.

ORDER: The appeal is sustained.

³ The applicant’s Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, was denied on August 18, 2008. The AAO notes that no appeal of that denial is in the record.