

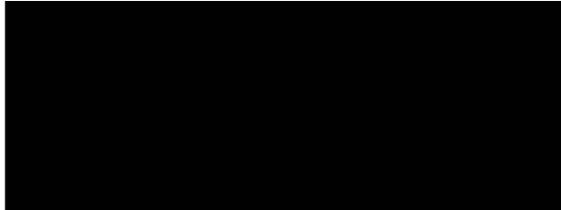
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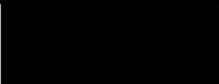
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MEXICO CITY, MX (SANTO DOMINGO)

Date: JUL 15 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:

SELF-REPRESENTED

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 Acting Officer-in-Charge (AOIC), Mexico City, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for applying for a K-1 nonimmigrant visa based on a fraudulent relationship. The record indicates that the applicant is the son of a lawful permanent resident of the United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 lawful permanent resident father and siblings.

The AOIC found that the applicant failed to establish that extreme hardship would be imposed on his father and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *AOIC's Decision*, dated February 17, 2004.

On appeal, the applicant states he wants his daughter to have “the opportunity to live a more fulfilling life which can only be obtained in the United States.” *Attachment to Form I-290B*, filed March 12, 2004.

The record includes, but is not limited to, a statement by the applicant and the applicant’s Form I-130. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 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 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 AAO notes that the record contains references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's father is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's father.

In the present application, the record indicates that on April 12, 1995, the applicant's father, a lawful permanent resident of the United States, filed a Form I-130 on behalf of the applicant. On February 27, 1996, the applicant's Form I-130 was approved. In October 2001, the applicant's fiancée filed a Petition for Alien Fiancé(e) (Form I-129F).¹ On November 4, 2003, the applicant withdrew the Form I-129F. On November 13, 2003, the applicant filed a Form I-601. On February 17, 2004, the AOIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident father. 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 (Board) 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 applicant claims that he has "one child, [his] daughter, in [his] custody and all [his] family lives in the United States; [his] mother, father, brothers, and nephews. [He] wish[es] to raise [his] daughter near her family in order that she receives the moral and spiritual guidance offered to her by her grandparents and her uncles. Please note that [the Dominican Republic] is financially unstable and poor; [he is] unable to provide her with the financial support she requires in order to grow up healthy. [He is] also aware that in the United States [his] daughter will be able to receive all the basic necessities and much more; the opportunity to earn a higher education." *Attachment to Form I-290B, supra*. The AAO notes that as noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act. Additionally, the AAO notes that the applicant has not established the extreme hardship his father is suffering by being separated from the

¹ At a subsequent interview, the relationship between the applicant and the petitioner was determined to be fraudulent.

applicant. The AAO notes that the applicant's father is a native of the Dominican Republic, and it has not been established that the applicant's father has no family ties in the Dominican Republic. The AAO finds that the applicant failed to establish that his father would suffer extreme hardship if he joined the applicant in the Dominican Republic.

In addition, the applicant does not establish extreme hardship to the applicant's father if he remains in the United States, in close proximity to his family. As a lawful permanent resident of the United States, the applicant's father is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's father faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's lawful permanent resident father has endured hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.