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FILE:



Office: BUFFALO [ALBANY, NY]

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 District Director, Buffalo, New York, and 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 Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by using a passport in someone else's name. The record indicates that the applicant is married to a lawful permanent resident of the United States and she 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 her lawful permanent resident spouse and United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated May 9, 2006.

On appeal, the applicant's husband states "[t]here would be extreme hardships for [himself] (a resident alien and the petitioner) and [their] two U.S. citizen children (twins) who are both one year and eight months old if [the applicant] were to be sent back to Guyana." *Form I-290B*, filed June 9, 2006.

The record includes, but is not limited to, an affidavit from the applicant's husband, the applicant's marriage certificate from Guyana, birth certificates for the applicant's United States citizen children, and various country reports and newspaper articles on Guyana. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) 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(i) 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 several references to the hardship that the applicant's United States citizen children 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 her 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 husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that in September 2001, the applicant entered the United States by presenting a passport in someone else's name. On September 13, 2000, the applicant's husband, a lawful permanent resident of the United States, filed a Form I-130 on behalf of the applicant. On October 13, 2004, the applicant's Form I-130 was approved. On June 13, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 23, 2005, the applicant filed a Form I-601. On May 9, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant had failed to demonstrate extreme hardship to her 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 herself 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 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 AAO notes that the applicant's husband did not provide a statement regarding what, if any, hardship he would suffer if he joined the applicant in Guyana. The applicant's husband is a native of Guyana, and it has not been established that the applicant and her husband have no family ties to Guyana. Furthermore, the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job

in Guyana. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanied her to Guyana.

In addition, the applicant does not establish extreme hardship to her lawful permanent resident spouse if he remains in the United States, maintaining his employment. The applicant's husband states that if the applicant is removed to Guyana, he "cannot manage to care for [their] babies the way [the applicant] does; and if even if [sic] could, it would be tough to do so all by [himself]...[M]ost of all, [he] certainly [does] not want [their] Kids to be raised without their Mother." *Affidavit from* [REDACTED] dated May 27, 2006. As noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. Additionally, the AAO notes that it has not been established that the applicant's children, who are 3 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Guyana. The applicant's husband states "[t]hat if [the applicant] were to go back home, [his] diet would be severely affected as [he relies] heavily on her to prepare [their] Guyanese dishes." *Id.* The AAO notes that there is no documentation in the record establishing that the applicant's husband has to eat a Guyanese diet. The applicant's husband claims that "the crime situation [in Guyana] is getting worse." *Form I-290B, supra.* He states that if the applicant were removed to Guyana, he "would not be able to function normally for [he] would be worried about her safety because of the rising crime rate." *Affidavit from* [REDACTED], *supra.* The AAO notes that the applicant provided newspaper articles and country reports regarding the crime situation in Guyana; however, the applicant failed to establish that her husband would worry more than any other individual in his situation or that this would cause an extreme hardship to him. The AAO notes that as a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that if the applicant were removed from the United States, "there would be a terrible and devastating disruption of [their] financial and economic stability." *Id.* The AAO notes that there was no evidence submitted establishing that the applicant provides any financial support to her husband. The applicant's husband states it would be difficult for the applicant to find a job in Guyana; however, it has not been established that the applicant will be unable to find a job in Guyana and that she will be unable to contribute to her family's financial wellbeing from a location outside of the United States. *Id.* 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 AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

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 BIA 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 husband will

endure hardship as a result of separation from the applicant. However, his situation 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 spouse 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 she 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.