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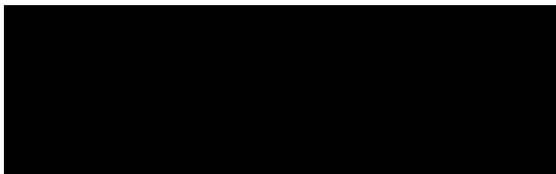
U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SACRAMENTO, CA

Date: **MAR 27 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident 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 and their U.S. citizen child.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon the applicant's lawful permanent resident spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 19, 2007.

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

In support of the assertions made on appeal, the record includes, but is not limited to, tax returns for the applicant and the applicant's spouse; earnings statements and W-2 Forms for the applicant's spouse; employment letters for the applicant's spouse; and a statement from the applicant's spouse. 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that on August 27, 1999 the applicant used a false passport to gain admission to the United States. *Form I-485, Application to Register Permanent Residence or Adjust Status; See also false passport.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes 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 herself or the applicant's children 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). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's lawful permanent resident 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.

The AAO notes that extreme hardship to the applicant's lawful permanent resident spouse must be established in the event that he resides in Romania or the United States, as he 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.

If the applicant's spouse travels with the applicant to Romania, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse was born in Romania and lived there until he was 19 years old. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Statement from the applicant's spouse*, dated September 30, 2007. The record does not address what family members, if any, the applicant's spouse may have in Romania. The applicant's spouse stated that he and his family had no freedom in Romania and due to his father's profession as an ordained minister and his family's faith, he and his family had extreme life threatening encounters with the Communist regime. *Statement from the applicant's spouse*, dated September 30, 2007. The applicant's spouse came to the United States as a refugee. *See Permanent Resident Card for the applicant's spouse*. While the AAO acknowledges the statements of the applicant's spouse, it notes that the applicant's spouse left Romania in 1979 (*See statement from the applicant's spouse*, dated September 30, 2007), and the record fails to demonstrate how the applicant's spouse would currently be affected if he returned to Romania. The record does not include any published country conditions reports regarding the current political and economic situation in Romania. The applicant's spouse states that he wants to be able to provide a comfortable and healthy life for the applicant and their child. *Statement from the applicant's spouse*, dated September 30, 2007. He contends that returning to Romania is returning to the poverty of a third world country and would be unbearable. *Id.* On appeal, the applicant contends that her spouse would not be able to work in Romania because he is an air conditioning/heating

technician and there is no air conditioning in Romania. *Form I-290B*. Although the record includes tax returns and earnings statements for the applicant's spouse, there is no documentary evidence in the record to show that the applicant's spouse would be unable to contribute to his family's financial well-being from Romania. The applicant's spouse states that his child does not speak the Romanian language and would not be able to have a good life, proper health care, and an adequate education in Romania. *Statement from the applicant's spouse*, dated September 30, 2007. As previously noted, the applicant's child is not a qualifying relative for purposes of this case and the record does not address how the issues affecting the applicant's child would impact the applicant's spouse, the only qualifying relative. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Romania.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse would suffer extreme hardship. The parents of the applicant's spouse were living in the United States, but have passed away. *Id.* The applicant's spouse came to the United States with three siblings. *Id.* The record does not address where those siblings currently reside and whether there are any additional family members who live in the United States. The record does not address whether the applicant's spouse would be financially impacted if he remained in the United States. Neither does the record address whether the applicant's spouse would have any additional responsibilities, such as being a single parent caring for his U.S. citizen child. The applicant's spouse states that he and the applicant have a great marriage. *Id.*

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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 spouse will endure 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in 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) 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.