



U.S. Citizenship
and Immigration
Services

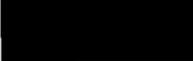
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FILE:



Office: BALTIMORE, MD

Date:

NOV 28 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who was determined 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 having sought admission to the United States by fraud or willful misrepresentation. The applicant attempted to enter the United States using the passport of another person in 1995. She does not contest her inadmissibility. The applicant is the spouse of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse and children.

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 December 16, 2004.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's husband would not suffer extreme hardship if the applicant were denied admission to the United States. Specifically, counsel states that the applicant would suffer extreme hardship if he remained in the United States without the applicant and had to raise their five children on his own, and if he returned to El Salvador with the applicant because he would be unable to find work and support himself and the family there. *Brief in Support of Appeal at 2*. Counsel relies on decisions of the Board of Immigration Appeals and other courts to support the assertion that family separation is an important factor that may alone establish extreme hardship, and further states that financial hardship leading to a deprivation of the ability to earn a living, rather than a mere reduction in standard of living, amounts to extreme hardship. *Brief at 3-4*. Counsel claims that the emotional effects of being separated from the applicant, whom he has known since 1980 and with whom he has five children ranging in age from nine to twenty-six, would amount to extreme hardship for her husband. *Brief at 6*. Counsel further asserts that USCIS erred in failing to give proper weight to a report from an alcohol and anger management counseling program attended by the applicant's husband that states that the applicant's removal from the United States, leaving her husband alone to care for their children and financially support the family, would put his sobriety at risk. *Brief at 12-14*. Counsel additionally asserts that returning to El Salvador with the applicant would lead to extreme hardship because the applicant's husband would be unable to find work and support the family and because he would have to readjust to life in El Salvador after living in the United States since 1988. Counsel relies on the extension of Temporary Protected Status (TPS) for nationals of El Salvador to support the assertion that the country's economy and infrastructure have not recovered from earthquakes that occurred several years ago, and the country cannot accommodate a large number of returnees from the United States. *Brief at 16*.

In support of these assertions, counsel submitted the following documentation: Affidavits from the applicant and her husband; letters from the alcohol and anger management counseling program attended by the applicant's husband; A January 2005 Press Release announcing the extension of the TPS for nationals of El Salvador; copies of permanent resident cards and birth certificate for the applicant's husband and children; copies of photographs of the applicant with family members; school records for the applicant's children; letters from the applicant's employer and her husband's employer; mortgage documents and other

information related to the applicant's and her husband's financial situation; and income tax returns. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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 566. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). 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).

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a forty-three year-old native and citizen of El Salvador who initially entered the United States without inspection in 1988 and attempted to reenter using a fraudulent passport in 1995. The applicant married her husband, a forty-nine year-old native and citizen of El Salvador and Lawful Permanent Resident, in 1990. They currently reside in Hyattsville, Maryland with their five children.

Counsel asserts that the applicant’s spouse would suffer emotional hardship if the applicant were removed to El Salvador and he remained in the United States. Counsel states that the applicant first met her husband in 1980 and their first child was born in 1982, and they have been together since that time. *Brief at 6*. In his affidavit the applicant’s husband states,

While putting our children through school, both my wife and I have worked full time, which we continue to do. In 2000 we bought our first house . . . , where we still live with our five children. I could never have raised my family so well without my wife. . . . My wife and I have been together for going on twenty-five years. We both began life very poor Together we are raising five children, none of whom so far has given us anything to regret. . . . Despite all obstacles, we have kept our family together. As you can see from the photos, we are a very close family. *Affidavit of [REDACTED]* dated November 6, 2004.

Evidence on the record further indicates that the applicant’s husband completed a twenty-six week program of alcohol and anger management counseling in 2004 after a domestic dispute involving the applicant and their

daughter. The clinical director of the treatment program reports that the support of the applicant is critical for her husband to successfully cope with his alcoholism. *Letter from [REDACTED] MPA, LCADC, dated January 3, 2005.* The letter states:

I wrote that it would be detrimental to [REDACTED]'s recovery to have his wife deported at this time. Her departure would place his sobriety at risk since she has been such a support to him throughout this ordeal. Anyone familiar with the Alcoholics Anonymous 12-step program recognizes the importance of having support at home to remain sober. The loss of his wife could realistically lead to depression, which could result in a potential relapse.

The applicant's husband further states, "I used to have a drinking problem and I was drinking when this happened. Because of this incident, I went through a twenty-six week course and have remained sober ever since. I could not continue to stay sober without my wife." *Affidavit of [REDACTED]*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letters from the mental health professional who treated the applicant's husband indicates that the applicant's husband, as a recovering alcoholic, would likely experience depression and possibly relapse into alcoholism if he loses the support of the applicant. In light of his history of alcoholism, it appears that the resulting emotional hardship that would result from separation from the applicant would be unusual or beyond that which would normally be expected upon deportation or exclusion. The emotional hardship the applicant's husband would experience, when combined with financial hardship resulting from the loss of the applicant's income and the difficulties that would arise from raising their children on his own while working full time, would amount to extreme hardship if the applicant were removed and her husband remained in the United States.

Counsel further asserts that the applicant's husband would suffer severe emotional and financial hardship if he relocates to El Salvador with the applicant because he would lose his employment and would be unable to support his family as he does in the United States. The AAO notes that the applicant and her husband have both been employed since arriving in the United States in 1988 and her husband currently supervises eleven employees and earns \$17.50 per hour. *See letter from [REDACTED] owner of [REDACTED]* The applicant and her husband have purchased a home, where they reside with their five children. Further, conditions in El Salvador are still being affected by a series of earthquakes in 2001, and as a result, TPS for Salvadoran nationals was extended. The extension was found to be warranted because there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001, and because El Salvador remains unable, temporarily, to adequately handle the return of its nationals. Extension of the Designation of El Salvador for Temporary Protected Status, 73 Fed. Reg. 57128 (October 1, 2008). It was determined that reconstruction of damaged infrastructure has not been completed and "[t]ransportation, housing, education, and health sectors are still suffering from the 2001 earthquakes." *Id.* In light of conditions in El Salvador, it appears likely that the applicant's husband would have difficulty finding employment there and the economic hardship he would experience would amount to more than a reduction in his standard of living. The economic hardship combined with emotional hardship resulting from losing his home and employment in the United States and having to readjust to life in El Salvador after twenty years, would rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The unfavorable factor in this matter is the applicant's use of a fraudulent passport when attempting to reenter the United States. The favorable factors in this matter are the extreme hardship to the applicant's spouse and to their children if she were removed from the United States, her lack of a criminal record or other immigration violations, the passage of approximately thirteen years since the applicant's immigration violation, the applicant's history of employment and paying income taxes in the United States, the applicant's length of residence in the United States, and the applicant's family and property ties in the United States.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the previous decision of the district director will be withdrawn and the application will be approved.

ORDER: The appeal is sustained, the prior decision of the director is withdrawn, and the application for a waiver of inadmissibility is approved. The director shall reopen the denial of the I-485 application on USCIS motion and continue processing the application for adjustment of status.