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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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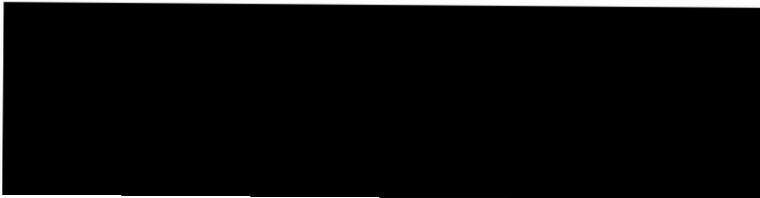
IN RE: Applicant:



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:



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. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the acting district director for continued processing.

The applicant is a native and citizen of Cambodia. The record indicates that the applicant presented a photo substituted and altered passport to procure entry to the United States on November 30, 1994. The applicant was thus 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 to the United States by fraud and/or willful misrepresentation.<sup>1</sup> 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 U.S. citizen spouse and children, born in 1999 and 1997.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 9, 2006.

In support of the appeal, counsel for the applicant submitted the following: a rebuttal report from [REDACTED], dated October 13, 2006; a letter from the applicant's U.S. citizen spouse, dated August 23, 2006; and financial documentation. 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 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....

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<sup>1</sup> The applicant does not contest the acting district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible...” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Section 212(a)(6)(C)(i) 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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant’s spouse, a U.S. citizen, is the only qualifying relative and hardship to the applicant and/or their U.S. citizen children cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s spouse asserts that he will suffer extreme emotional hardship due to the long and close relationship he has with his spouse. Moreover, he will suffer extreme hardship due to the hardships his children will face were they to be separated from their mother, a pivotal figure in their lives. *Letter from* [REDACTED] dated August 23, 2006. In a separate statement, the applicant’s spouse contends that the applicant has taken care of both children since they were born; it is tradition in their culture for the wife and mother to take care of the children. Although he loves the children very much, he attests that he cannot provide the kind of support that the applicant, as their mother, can provide and that said inability will cause him extreme hardship. *Statement of Extreme Hardship of* [REDACTED] dated October 12, 1999.

Finally, in a psychological evaluation conducted by [REDACTED], Psy.D., Dr. [REDACTED] elaborates on the fact that the applicant’s spouse, a native of Cambodia, was subjected to one of the most brutal regimes in history, one that killed approximately two million of its own citizens and virtually destroyed the country; he was also subject to massive dislocations. Dr. [REDACTED] points out

that the experience of significant losses and major stresses such as those referenced above increase the risk of a future depressive episode, especially combined with the threatened loss of his stability—his family. *Psychological Hardship Evaluation from* [REDACTED], dated October 13, 2006.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to two young children, without the complete support of the applicant. Moreover, as [REDACTED] contends, the applicant's spouse's own traumatic experiences while in Cambodia make him more susceptible for depression should his wife, to whom he depends on for his own care, and for the care of his two children, relocate abroad due to her inadmissibility. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to reside abroad while he remains in the United States. The applicant's spouse needs his wife's support on a day to day basis.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse states that no relatives are left in Cambodia and that there would be no one to support the family should he return to his home country. *Supra* at 2. [REDACTED] further references the emotional and psychological hardships the applicant's spouse would face were he to return to his home country, based on his traumatic experiences when the Khmer Rouge came to power-- there was not enough food to eat, he was put to work at a young age, he was separated from his family, he and was ultimately displaced to a refugee camp in Thailand prior to relocating to the United States in 1981. *Psychological Hardship Evaluation from* [REDACTED], *Psy.D.*, dated October 22, 2005.

Based on the applicant's spouse's traumatic experiences while in Cambodia and the emotional and psychological ramifications of said experiences, the AAO finds that the applicant's U.S. citizen spouse would experience extreme hardship were he to relocate to Cambodia to reside with the applicant.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardship the applicant’s U.S. citizen spouse and children would face if the applicant were to reside in Cambodia, regardless of whether they accompanied the applicant or remained in the United States, the applicant’s history of gainful employment, community ties, payment of taxes and the passage of more than fourteen years since the applicant’s immigration violation which led to the acting district director’s finding of inadmissibility. The unfavorable factors in this matter are the applicant’s fraud and/or willful misrepresentation.

The immigration violation committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The acting district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.