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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CHICAGO

Date: FEB 19 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. 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 Belize and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application. On appeal counsel contended that the law pursuant to which the applicant was found to be inadmissible was not in effect at the time the applicant is alleged to have misrepresented her citizenship, and that, in any event, the applicant did not misrepresent her citizenship. In previous submissions counsel had argued that the evidence demonstrates that the applicant's husband would suffer extreme hardship if the applicant is not admitted into the United States.

This office will first address counsel's assertion that waiver is not required in this matter because the applicant's alleged misrepresentation predates section 212(a)(6)(C)(i) of the Act.

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are inadmissible and ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [USCIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

Section 212(a)(6)(C)(i) of the Act, in effect prior to September 30, 1996, provides:

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.

The applicant cannot be found inadmissible pursuant to sections 212(a)(6)(C)(ii) and (iii) of the Act for actions undertaken before they became effective on September 30, 1996. The applicant was not found inadmissible based on those sections, however, but, rather, was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The AAO will address whether the applicant was correctly found to be inadmissible pursuant to that section.

The record contains a Form I-213, Record of a Deportable Alien. That form states that the applicant applied for entry at El Paso, Texas on October 5, 1992, representing to an immigration officer that she was born in Chicago and was a United States citizen. That document was signed by a CIS immigration officer of the legacy Immigration and Naturalization Service.

The record contains a sworn statement the applicant gave under oath, also on October 5, 1992. In it, the applicant stated that she had represented herself to be a citizen of the United States when, in fact, she had no claim to United States citizenship, and that she was actually a citizen of Belize.

Notwithstanding her current denial, the AAO finds that the applicant knowingly misrepresented herself to an immigration officer to be a United States citizen, a material fact, in attempting to enter the United States, and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

Thus, the instant applicant, who was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, is eligible to apply for a waiver of her inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s husband is the only qualifying relative listed on the Form I-601, Application for Waiver. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 has held:

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).

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).

On appeal, counsel made no argument pertinent to hardship that would be occasioned to the applicant’s husband if the waiver application is not granted.

The record contains a May 17, 2005 statement from the applicant’s husband, who stated that he and the applicant have been together ten years, that they love each other, are very happy together, and look forward to spending their lives together. He further stated that he cannot bear the thought of being separated from his wife but that the unemployment rate in Belize is very high and that he would also have less access to medical care there. He stated, however, that he is in overall good health.

The AAO notes that the applicant’s husband would be under no legal obligation to accompany his wife if she were removed to Belize. Further, neither counsel nor the applicant provided any evidence, other than the applicant’s husband’s statement, pertinent to the availability of quality medical care in Belize. Neither submitted any argument pertinent to how the allegedly lower quality of medical care would cause hardship to the applicant’s husband, who stated that he is in good health. The evidence in the record does not, therefore, demonstrate that the allegedly lower quality of medical care available in Belize would visit any hardship upon the applicant’s husband.

In a May 26, 2005 statement submitted with the application for waiver, counsel reiterated that the applicant and her husband have a close and loving relationship. The record contains no other

evidence or argument pertinent to hardship that would be occasioned to the applicant's husband by her removal from the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission, whether or not he elects to accompany her to Belize. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has very loving and devoted husband, who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.