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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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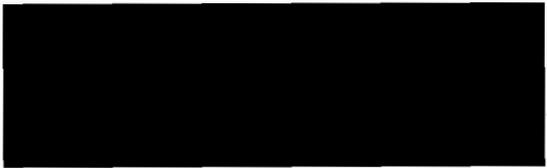


FILE: [REDACTED] Office: MIAMI, FL (WEST PALM BEACH) Date: OCT 21 2009

IN RE: Applicant: [REDACTED]

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.

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida. On August 8, 2008, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen or reconsider the denial of the appeal. The motion will be granted. The previous decisions shall be withdrawn and the waiver application will be approved.

The applicant, [REDACTED], is a native and citizen of Chile 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the son of [REDACTED], a naturalized citizen of the United States. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the acting district director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Acting District Director*, dated May 29, 2007. Counsel for the applicant submitted an appeal, which the AAO dismissed finding the record failed to establish extreme hardship to the applicant's mother (his qualifying relative) if the waiver application were denied.

On motion, counsel states that the applicant did not willfully commit a material misrepresentation in his I-140 petition; and he states that the applicant disputes the finding of inadmissibility. Counsel states that the applicant filed a bar complaint against the attorney who handled his case and was arrested for immigration fraud. According to counsel, the Department of Homeland Security established that there was a material misrepresentation with the applicant's case and that is why he filed a waiver application. Counsel asserts that the submitted medical documentation established extreme hardship to [REDACTED], who is 72 years old and has mild Alzheimer's disease, dementia, and major depression. Counsel states that Alzheimer's is a progressively deteriorating disease and the record contains letters by doctors and a psychologist about [REDACTED] and information about Alzheimer's. Counsel contends that [REDACTED] requires the support of the applicant, who is her caregiver, and due to her medical conditions, [REDACTED] cannot move to Chile. Counsel states that the applicant's departure from the United States would result in severe hardship to [REDACTED] as she has been living with him for 20 years and her other sons who are single and are either unable or unwilling to take care of her. He states that [REDACTED] would not receive medical treatment in Chile because Medicare does not cover medical expenses there and her treating physicians are in the United States. He states that as her condition worsens she would be unable to travel to visit the applicant. According to counsel, all of these factors establish extreme hardship to [REDACTED].

The AAO grants counsel's motion.

Counsel claims on motion that the applicant disputes the finding of inadmissibility. In the memorandum submitted in support of the waiver application counsel had claimed that the applicant did not commit a willful material misrepresentation in filing his I-140 petition. However, counsel also stated in the memorandum that "after exhausting all his remedies, the Department of Homeland Security has established that there was a material misrepresentation and the applicant understands that a waiver is now necessary." The AAO notes that the applicant on appeal did not make any statements refuting the director's finding of inadmissibility, and, on motion, the applicant provides

no explanation of why he is not inadmissible under section 212(a)(6)(C) of the Act. The record, therefore, supports the finding of inadmissibility under section 212(a)(6)(C) of the Act.

The applicant seeks a waiver of inadmissibility under section 212(i) of the Act. To qualify for a waiver that section requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to the applicant and his U.S. citizen child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen mother. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's mother must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in Chile. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In addition to other documentation, the record contains affidavits; clinical evaluations of [REDACTED] dated April 8, 2006 and June 14, 2007, by [REDACTED]; June 12, 2007 and a June 9, 2006 neurologic consultations by [REDACTED]; medical records; information about Alzheimer's

disease; information about Chile; social security benefit statements; a savings statement; and income tax records.

In her affidavit dated August 28, 2008, [REDACTED] states that she resides with the applicant and his wife and child and has lived with them for 20 years in the United States. She states that she has Alzheimer's disease and severe depression, and her depression has worsened because she does not know if she will return home to the applicant and his wife and child. [REDACTED] states that it is difficult for someone to take care of her since her illness is incurable and progressive, and is worried about what will happen to her when she is alone. [REDACTED] indicates that she receives medical care in the United States and due to her medical condition is unable to leave the United States. [REDACTED] confirms that she has three sons in the United States, but she states that they do not have the "compassion, structure, or composition of family since they are divorced or separated." She indicates that none of her three other sons want her to live with them; she states that she does not want to live with her other sons, and that the applicant has given her a home and she would not exist without him and his family.

The clinical evaluation by [REDACTED] dated April 8, 2006, conveys that [REDACTED] relies on the applicant as her primary source of emotional support. [REDACTED] clinical evaluation dated June 14, 2007, states that his examination of [REDACTED] found her to be "poorly oriented" and "perhaps somewhat disconnected from her own underlying emotions." He states that "the evidence suggests that her ability to function independently has deteriorated significantly and is likely to decline further in the future." [REDACTED] conveys that the applicant is [REDACTED]'s sole source of financial support.

The neurologic consultation by [REDACTED] that is dated June 12, 2007, conveys that the history of [REDACTED] illness dates back over a year, at which time she had problems with memory. He states that he saw her over a year ago and had started her on Aricept; however, she stopped the medication on her own. He indicates that [REDACTED] has mild Alzheimer's disease.

In his June 21, 2007 letter, [REDACTED] states that [REDACTED] was seen for a psychiatric evaluation on June 8, 2007, and was diagnosed with Major Depression and Alzheimer's Dementia, and that she is to continue with Lexopro and Aricept.

In view of the presented factors, 73-year-old [REDACTED] close relationship with and reliance on the applicant, with whom she has lived for 20 years, [REDACTED] statement that her other sons do not want her to live with them and she only wishes to live with the applicant and his family, and [REDACTED] diagnosis of alzheimer's, dementia, and major depression, the AAO finds that the hardship that [REDACTED] would experience if she remained in the United States without the applicant is extreme as it is unusual or beyond that which would normally be expected upon removal.

With regard to joining the applicant to live in Chile, the AAO finds that [REDACTED] advanced age, the 20 years that she has lived in the United States, and the need to continue her treatment for depression, alzheimer's disease and dementia, would cumulatively rise to the level of extreme hardship if she were to join the applicant to live in Chile.

Based upon the record before the AAO, the applicant in this case has established extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's mother, and the care that he has provided to her. The AAO notes that the applicant does not appear to have a criminal record.

The unfavorable factors are applicant's misrepresentation, his overstay of his initial visa, and periods of unauthorized employment. While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's mother as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The decision of the AAO, dated August 8, 2008, is withdrawn. The application is approved.