



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK, NJ

Date: MAY 15 2007

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Greece who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant was also found to inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on June 22, 2000. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the documentation in the record did not establish that the applicant's U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. The application was denied accordingly. *Decision of the District Director*, dated July 22, 2005.

On appeal, counsel states that the district director abused her authority in denying the applicant's waiver application. He states that the applicant demonstrated that her U.S. citizen husband would suffer extreme hardship if she were removed from the United States. Finally, counsel states that the decision failed to consider the positive factors in the case and placed "insufficient [sic] weight" on the negative factors. *Form I-290B*, dated August, 22, 2005.

The record includes, but is not limited to, statements from the applicant's spouse, a doctor's note for the applicant's spouse and counsel's brief. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that on May 22, 2000 the applicant presented a passport and visa with the name [REDACTED], the applicant's name from a previous marriage, to immigration officers at JFK International Airport. In secondary inspection, the applicant stated under oath that she had overstayed her visitor's visa on three separate occasions. She was found inadmissible to the United States as an immigrant without proper documentation. She withdrew her application for admission and returned to Greece. Upon her return and knowing that she was inadmissible to the United States, the applicant obtained a new Greek passport and visa in her maiden name with an incorrect birth date of October 29, 1953. The AAO notes that the applicant's birth certificate states her date of birth as September 29, 1953. On June 22, 2000, the applicant used this passport with the name [REDACTED] to enter the United States.

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.

On March 21, 2002, the applicant filed her adjustment application. On November 5, 2002, the applicant departed the United States, triggering the unlawful presence provisions of the Act. In that she used a passport in a new identity to hide her inadmissibility, the applicant accrued unlawful presence from when she entered the United States on June 22, 2000 until March 21, 2002, the date her adjustment application was filed. In applying for lawful permanent residence, the applicant is seeking admission within 10 years of her June 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver and a section 212(i) waiver of the bars to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Greece or in the event that he resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Greece. In his brief, dated November 14, 2005, counsel asserts that the applicant's spouse would not be able to join the applicant in Greece. Counsel states that the applicant's spouse's family ties and emotional support are in the United States, the spouse has never lived in Greece, does not speak Greek, and does not share the same cultural beliefs as the Greeks. The AAO notes that in an affidavit, dated August 8, 2005, the applicant's spouse states that since divorcing his first wife he has been unable to spend time with his children and that the applicant is the only family he has, thereby, diminishing counsel's claims regarding the spouse's family ties to the United States. Counsel also states that the applicant's spouse is 53 years old and works in construction and that he would not be able to find employment in Greece using his knowledge of construction because Greece has a completely different method of construction than the United States. The AAO notes that no country information was submitted to support counsel's statements regarding the applicant's spouse's ability to find employment in Greece and/or the construction industry in Greece. In addition, the AAO notes that the applicant's spouse submitted a business card and letter showing that he is now employed as a facilities manager at the [REDACTED] in Philadelphia, PA. An employment letter dated November 2, 2001 indicates that from 1998 through 2001, the applicant's spouse was a salesman for a restaurant equipment company. The applicant's spouse makes no assertions regarding relocation to Greece. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the AAO notes that relocation to a foreign country generally involves some inherent difficulties such as adapting to cultural norms. The record does not reflect that relocation to Greece will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In his brief, counsel states that the applicant's spouse would suffer extreme hardship because he would be separated from his partner, his friend, and his wife with whom he had built a life. In his affidavit, dated August 19, 2005, the applicant's spouse states that the loss of his wife has caused him extreme hardship and that the applicant is the only family he has. In his affidavit, dated April 27, 2004, the applicant's spouse states that the applicant's immigration problems have caused his family a great deal of stress. He states that the applicant has made him happy and content for the first time in his life. The AAO notes that the applicant's spouse did not provide any documentation that would establish the nature of

severity of the emotional hardship he is suffering as a result of being separated from the applicant. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not demonstrate that his situation, is different from that of other individuals separated as a result of removal.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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)(9)(B) 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.