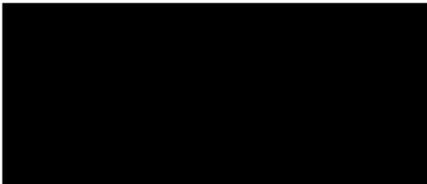


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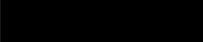
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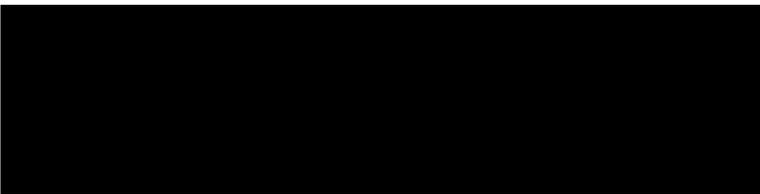
Date: JUL 25 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 244(c)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1254(c)(2)(A)

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center. 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 applied for temporary protected status (TPS) under § 244 of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1254. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States by fraud or willfully misrepresenting a material fact; section 241(a)(5), reinstatement of removal orders against aliens reentering United States illegally; 212(a)(6)(C)(ii), for making a false claim of U.S. citizenship; and section 212(a)(7)(A)(i)(I), for being an immigrant not in possession of a valid entry document. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 244(c)(2)(A) of the Act, 8 U.S.C. § 1254(c)(2)(A), in order to remain in the United States with her U.S. citizen spouse.

The applicant has indicated that she first entered the United States without inspection near Brownsville, Texas in December 1995. The record reflects that on January 19, 1997, the applicant applied for admission into the United States at John F. Kennedy Airport in New York presenting a Salvadorian passport containing a U.S. nonimmigrant B1/B2 visa for an individual named [REDACTED]. Upon secondary examination, it was revealed that the passport was a photo-substituted document. The applicant admitted the passport did not belong to her and chose to withdraw her application for admission in lieu of exclusion proceedings. The applicant presumably reentered the United States at a later date, but the record contains no evidence indicating the date and manner of this entry. The applicant and her spouse, [REDACTED] were married in Central Falls, Rhode Island on March 14, 1997.

On May 17, 2001, the applicant filed a Form I-821 Application for Temporary Protected Status (TPS). In a Notice of Intent to Deny issued to the applicant on September 2, 2005, the director stated that the applicant was found to be inadmissible under Section 212(a)(6)(C) on January 19, 1997 and her TPS application would be denied unless she could show eligibility for a waiver. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on September 13, 2006.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. The director stated that the applicant is also ineligible/inadmissible under the following sections of the Act: 241(a)(5) (reinstatement of removal orders against aliens reentering United States illegally); 212(a)(6)(C)(ii) (false claim of U.S. citizenship); 212(a)(7)(A)(i)(I) (immigrant without documents). *Decision of the Director* [REDACTED] dated November 13, 2006. The director also stated: "You are now considered an aggravated felon because you reentered illegally and you have become subject to the \$250,000.00 fine and imprisonment up to two (2) years." *Id.*

On appeal, counsel contends that the director's statement that the evidence shows hardship only in the form of "mere separation" ignores substantial evidence of other hardships submitted by the applicant. Counsel maintains that the evidence shows that denial of the waiver would cause medical; economic; educational; and psychological, social, and cultural hardship to the applicant's spouse and son. *Brief in Support of Appeal*, dated January 12, 2007.

Counsel also asserts that the director erred in finding the applicant ineligible or inadmissible as an aggravated felon or under sections 241(a)(5), 212(a)(6)(C)(ii) or 212(a)(7)(A)(i)(I) of the Act. Counsel contends that there is no evidence in the record showing that the applicant was ever ordered removed, made a claim of U.S. citizenship, or was convicted of an aggravated felony and is thus not inadmissible under sections 241(a)(5) or 212(a)(6)(C)(ii). Counsel also argues that section 212(a)(7)(A)(i)(I) of the Act applies to immigrants seeking admission at a port of entry, and has no relevance to the adjudication of an application for TPS.

The record contains a copy of the marriage certificate of the applicant and her spouse; affidavits from the applicant's spouse, dated October 7, 2005 and March 20, 2001 respectively; a copy of the birth certificate of the applicant's son, [REDACTED] born at Boston, Massachusetts on April 26, 1998; copies of the applicant's medical and dental bills; copies of utility bills and financial and tax documents for the applicant and her spouse; various reports and articles detailing living conditions in El Salvador. The entire record was reviewed and considered in rendering this decision.

Section 244 of the Act contains the eligibility standards for aliens applying for temporary protected status and includes provisions for waiver of most grounds of inadmissibility. Section 244(c)(2) of the Act provides, in pertinent part:

(A) Waiver of certain grounds of inadmissibility.—

...

- (i) the provisions of paragraphs (2) and (7)(A) of section 212(a) shall not apply;
- (ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. § 1254(c)(2).

The AAO concurs with counsel that there is insufficient factual basis to find the applicant ineligible to apply for TPS under sections 241(a)(5), 212(a)(6)(C)(ii) or 212(a)(7)(A)(i)(I) of the Act or as an aggravated felon. Section 241(a)(5) of the Act provides for the reinstatement of removal orders against aliens who reenter the United States illegally after having been removed or voluntarily departing under an order of removal. It provides that aliens subject to reinstatement are ineligible to apply for any relief under the Act. As indicated above, the record reflects that the applicant withdrew her application for admission in 1997 and was never ordered removed. Consequently, there is no removal order to reinstate in this case and the applicant is not ineligible to apply for TPS. Likewise, though the applicant would be an aggravated felon if she made an illegal entry after being ordered removed, she can not be considered an aggravated felon in the absence of a removal order. The director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) for falsely claiming U.S. citizenship is also not supported by the record, as the evidence shows that the applicant presented a Salvadoran passport when she sought admission in 1997 and never claimed to be a U.S. citizen. Finally, though the record reflects that the applicant is inadmissible under section 212(a)(7)(A)(i)(I), section 244(c)(2)(A)(i) of the Act provides that inadmissibility under this section does not render an alien ineligible to apply for TPS.

Nevertheless, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission to the United States by fraud or misrepresentation, and must seek a waiver of inadmissibility in order to be granted TPS. However, the director failed to apply the relevant waiver provisions found in section 244(c)(2) of the Act in denying the applicant's waiver application. The applicant's waiver application must be reviewed under the standard found in section 244(c)(2) of the Act.

The record shows that humanitarian purposes and family unity interests will be served by granting a waiver of inadmissibility in this case. Although El Salvador has experienced considerable improvement in human rights conditions since the time of the applicant's original departure from that country in 1997, the Secretary of Homeland Security has observed that "there continues to be a substantial, but temporary, disruption in living conditions in El Salvador as the result of an environmental disaster, and El Salvador continues to be unable, temporarily, to handle adequately the return of its nationals." *Extension of the Designation of Temporary Protected Status for El Salvador*, 71 Fed. Reg. 34637 (June 15, 2006). More particularly, the Secretary has noted "a continued deficit in low-cost housing and a lack of access to hospital-based healthcare services for many communities." *Id.* at 34638. Although the evidence on the record does not show that the applicant's life would be at risk in El Salvador due to some specific threat, protection of human rights in El Salvador is "undermined by widespread violent crime, including gang-related violence, impunity, and corruption" and "violence and discrimination against women" and "abuses against children" are "significant human rights problems." *See U.S. Department of State Country Reports on Human Rights Practices, El Salvador* (March 6, 2007). Accordingly, the AAO finds that country conditions in El Salvador raise significant humanitarian concerns.

A waiver of inadmissibility in this case would also assure family unity. The record reflects that the applicant resides with her lawful permanent resident husband and 9-year-old U.S. citizen son. The applicant's son was born in the United States and has resided here his entire life. The applicant has resided with her husband since their marriage in 1997. In his affidavit dated October 7, 2005, the applicant's spouse maintains that he would suffer psychological, social and cultural hardships if he returned to El Salvador because he has "not lived in a third world country for over 17 years." The applicant's spouse explains that although he does not suffer from any "life-threatening" conditions, he is nonetheless "a man who is over fifty" and requires access to quality health care unavailable in El Salvador to individuals of limited financial means such as himself.

Taken together, the humanitarian and family unity concerns discussed above are sufficient to support a waiver of inadmissibility in this case.

The grant or denial of the above waiver does not turn only on whether the applicant has established sufficient humanitarian and family unity concerns. It also depends on a determination that the applicant merits a favorable exercise of discretion by the Secretary. Because the applicant was found statutorily ineligible for the waiver, the district director did not reach the issue of discretion.

The favorable factors in this matter are the political and social conditions in El Salvador the applicant would face if she returned there, her lack of a criminal record, and the applicant's family ties to her husband and U.S. citizen son. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO finds that humanitarian concerns raised by the prospect of returning the applicant to El Salvador, combined with the interest of maintaining family unity, outweigh the unfavorable factor in the application. Therefore, a favorable exercise of discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 244(c)(2)(A), the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.