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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



U.S. Citizenship  
and Immigration  
Services

H5

FILE:

Office: MEXICO CITY (SANTO DOMINGO)

Date: **APR 21 2010**

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)

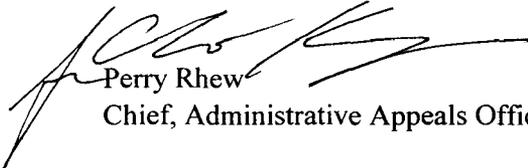
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City. 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 Trinidad who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated November 7, 2006.

The record contains, *inter alia*: a letter from the applicant; a letter from the applicant's daughter; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act 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.

Section 212(i) provides:

(1) 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 . . . .

In this case, the district director found that the applicant lied on her application for a non-immigrant visa in 1995. Specifically, the record shows that the applicant stated that her entire family lived in Trinidad when, in fact, they were living in the United States. The applicant conceded she misrepresented this fact because she thought her visa application would be denied if she had told the truth. *Record of Sworn Statement of* [REDACTED], dated January 24, 1995. Therefore, the record

shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, the applicant states that she has lived a very hard life. She contends she has eight children and nine grandchildren, all of whom live in the United States. The applicant wants to be able to see her family more than once every two or three years when they visit her in Trinidad. She states she lives a very sad and lonely life. The applicant states she has missed so much, including her daughter's wedding. She contends she cries every Sunday and every time she hangs up the phone after talking with her children and grandchildren. *Letter from* [REDACTED] dated July 21, 2006.

The applicant's daughter states that the applicant's husband, [REDACTED], was able to visit the applicant in Trinidad only once in fifteen years because he himself had a residency application pending with the United States Citizenship and Immigration Services. According to the applicant's daughter, after [REDACTED] was granted residency, he has visited the applicant on a few occasions, but contends that he is unable to visit as often as he would like because of the cost of travel and his employment. In addition, the applicant's daughter states that her mother is an elderly woman who is sixty-three years old and lives alone in a house in Trinidad where crime and kidnapping has tremendously increased. The applicant's daughter states that her mother constantly lives in fear and that when she is sick, there is no one there to help her. The applicant's daughter states that even though all of the applicant's children can visit their mother in Trinidad, it takes at least eight hours to get there. She contends that her mother does not pose a threat to anyone and just wants to enjoy the rest of a very hard life. The applicant's

daughter states that her mother has missed birthdays, sicknesses, holidays, and births, and that it has been depressing for everyone. *Letter from* [REDACTED], dated December 5, 2006.

Upon a complete review, it is not evident from the record that the applicant's spouse will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that the applicant and her family have endured hardship and is sympathetic to the family's circumstances. However, the Act considers hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant, not the applicant herself or her children. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i). Therefore, the only qualifying relative in this case is the applicant's lawful permanent resident husband, [REDACTED]. Significantly, there is no statement or letter from [REDACTED] in the record. Aside from stating that [REDACTED] has been unable to visit his wife as often as he would like, *Letter from* [REDACTED] *supra*, neither the applicant nor her daughter have specifically addressed how the denial of the applicant's waiver application will cause [REDACTED] extreme hardship.

Furthermore, neither the applicant nor her daughter discuss the possibility of [REDACTED] moving back to Trinidad, where he was born and where he and the applicant married, to avoid the hardship of separation, and neither address whether such a move would represent a hardship to him. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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 (9<sup>th</sup> 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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 husband 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, 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.