

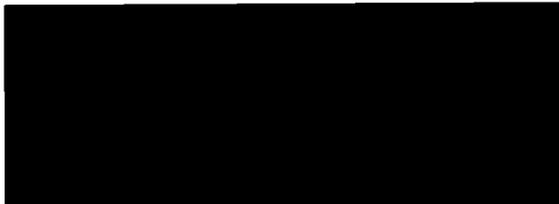
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: NEWARK

Date:

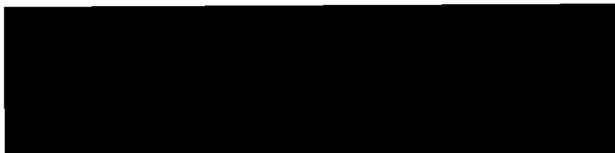
MAR 10 2010

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:



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 Field Office Director, Newark, New Jersey. 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 Columbia whom the field office director 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) for having committed fraud or misrepresentation in seeking an immigration benefit.

The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and child. The field office director also found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse, and denied the application accordingly. On appeal, counsel submitted a brief and additional evidence.

The record contains, among other documents, a declaration dated August 14, 2007 from the applicant's husband, tax returns, various bills, and cancelled checks.

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.

The record shows that on September 21, 2004, while entering the United States at New York City, the applicant presented a passport that was not lawfully issued to her, that contained a name other than her own, and that she had purchased for cash from someone named [REDACTED]. In procuring admission into the United States with that passport and a corresponding non-immigrant tourist visa, the applicant misrepresented her identity in seeking admission to the United States. Counsel and the applicant have not contested the applicant's inadmissibility on appeal. The AAO therefore affirms the field office director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act 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 . . .”

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 or her children is not directly 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 in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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).

In his August 14, 2007 declaration, the applicant's husband stated that the applicant's absence from the United States would cause him extreme hardship, but provided no explanation of that conclusion.

In the appeal brief the applicant's husband noted that his work schedule does not permit him to help his stepson prepare for school, walk him to the bus stop, and meet him after school while also providing day care for his young son at home. He also stated that he pays \$300 per month toward his mother's expenses and is paying off the business loan he used to start his tree service.

The applicant's husband stated, on appeal, that he could not move to Columbia because there is no work for tree service workers there.

The mere assertion that no work exists for tree service workers in Columbia is insufficient to demonstrate that the applicant's husband would be unable to find suitable employment there,

notwithstanding that he is currently employed as a tree service worker. The applicant's husband made no other representations pertinent to hardship that would result to him if he moved to Columbia to be with his wife.

Similarly, that the applicant's husband's work schedule does not permit him to care for his child and stepchild without assistance is insufficient to demonstrate that his wife's absence would cause him extreme hardship. Although this is likely to result in some hardship, the applicant has not addressed what alternative arrangements can and will be made for child care in her absence. Although the record contains a copy of the applicant's husband's 2006 tax return, showing his income during that year, it does not contain evidence of the applicant's husband's recurring expenses. As such, the AAO is unable to determine whether the applicant's husband has any disposable income that could be used for child care. Further, the applicant's husband did not explore the possibility that the children might be able to live with the applicant in Columbia without causing him extreme hardship.

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.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that, if the applicant returns to Columbia, the applicant's husband will experience extreme hardship, whether he joins her in Columbia or remains in the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under section 212(i)(1) of the Act. 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)(6)(C)(i) of the Act, the burden of proving eligibility rests 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.