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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: CHICAGO, ILLINOIS

Date: **MAY 29 2010**

IN RE:

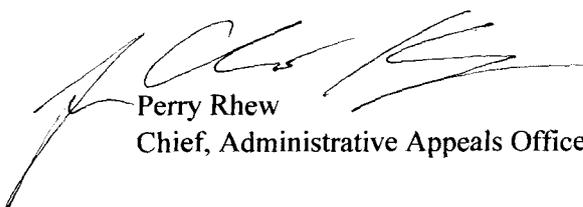
APPLICATION: Application for Waiver of Ground of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a 37-year-old native and citizen of Taiwan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured a visa or admission into the United States through fraud or misrepresentation. The applicant is a beneficiary of an approved relative visa petition based on his marriage to a U.S. citizen, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain with his wife in the United States.

The director found that the applicant established extreme hardship to his spouse, but denied the application in the exercise of discretion. *See Decision of the Director*, dated Aug. 30, 2007. On appeal, the applicant contends through counsel that he merits a positive exercise of discretion. *See Form I-290B, Notice of Appeal*, dated Sep. 25, 2007; *Brief in Support of Appeal*.

The record contains, *inter alia*, a copy of the couple's marriage certificate; medical records and letters for the applicant's wife; a letter and an affidavit from the applicant's wife; an affidavit from the applicant; an affidavit from the applicant's father; financial and tax records; and a brief on appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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 in pertinent part:

Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

(1) The [Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien

The record shows that the applicant attempted to enter the United States on April 8, 2003, by presenting his Taiwanese passport and a valid U.S. visitor's visa (B1/B2) in his birth name of [REDACTED]. See *Record of Sworn Statement; Form I-275, Withdrawal of Application for Admission*. The applicant stated to the immigration officer that he had previously been to the United States three to four times, and that he had performed irregular work as a chef during his previous visits. *Id.* The immigration officer informed the applicant that he was inadmissible to the United States under section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A), and the applicant withdrew his application for admission. *Id.* On September 2, 2003, the applicant changed his name from [REDACTED] to [REDACTED]. See *Household Registration*. On September 19, 2003, the applicant was issued a new visitor's visa in the name of [REDACTED], and he was admitted to the United States on October 2, 2003. See *Form I-94, Arrival – Departure Record; B1/B2 Visa for [REDACTED]*

On his Nonimmigrant Visa Application (Form DS-156), the applicant failed to divulge his birth name in response to Questions 8 and 9, which asked for "Other Surnames Used" and "Other First and Middle Names Used." See *Form DS-156*. The applicant also failed to disclose his previous visits to the United States, his previous U.S. visa, and that he had been refused admission to the United States. *Id.*

The applicant claims that he is not inadmissible under section 212(a)(6)(C)(i) of the Act because the misrepresentations relating to his September 2003 visa application were not willful. See *Affidavit of [REDACTED]* dated Oct. 18, 2007. Specifically, the applicant states that his "state of mind at the time when asked if [REDACTED] was ever issued or denied a visa, or a visa had been cancelled or refused admission, or previously violated the terms of a nonimmigrant visa, the response was negative since [REDACTED] had never applied for a nonimmigrant visa and has never entered the United States." *Id.*

In order to find a misrepresentation "willful," it must be determined that the applicant deliberately and voluntarily misrepresented material facts, and that he or she was aware of the falsity of the representation. See *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Garcia v. INS*, 31 F.3d 441, 443 (7th Cir. 1994) (holding that applicant willfully misrepresented material fact in procuring a visa). For the inadmissibility bar to apply, there is no requirement that a misrepresentation be made with an intent to deceive. See *Matter of Hui*, 15 I&N Dec. 288, 290 (BIA 1975) ("[T]he intent to deceive is no longer required before the willful misrepresentation charge comes into play."). Rather, knowledge of the falsity of the representation satisfies the willfulness requirement. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

Here, the questions on the applicant's visa application were unambiguous. Additionally, the visa application explicitly requested a listing of other names used by the applicant. Accordingly, the applicant's claim that he understood the questions on the visa application to refer only to the applicant after he changed his name to [REDACTED] lacks credibility. Because the applicant has not met his burden of showing by a preponderance of the evidence that his misrepresentations were not

willful, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa into the United States by willful misrepresentation.

In order to obtain a section 212(i) waiver of inadmissibility due to misrepresentation, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent, in the event that the qualifying relative remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See* 8 U.S.C. § 1182(i); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Relevant factors in the extreme hardship calculation include: 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. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

The record contains ample evidence to support the director's determination that the applicant's wife, [REDACTED] would suffer extreme hardship as a result of family separation or relocation to Taiwan. Specifically, [REDACTED] was diagnosed with chronic renal failure in 1993. *Letter from Fresenius Medical Services*, dated Sep. 24, 2007. She received a kidney transplant from her father in 1995. *See Letter from University of Wisconsin Hospital and Clinics*, dated July 31, 2007; *Letter from [REDACTED]* dated Sep. 28, 2007. Her treating physician states that [REDACTED] is currently under her care for end stage renal disease, and that she receives life-sustaining hemodialysis three times a week. *Letter from [REDACTED]* dated July 26, 2007. [REDACTED] states that [REDACTED] is not able to travel long distances because of her multiple medical issues and her need for dialysis treatments. *Id.* Additionally, [REDACTED] is on a kidney transplant waiting list at the University of Wisconsin. *Id.*; *see also Letter from University of Wisconsin*. The Transplant Clinical Social Worker at the University of Wisconsin states that relocation to Taiwan "would make it next to impossible for [REDACTED] to remain a viable candidate on [their] transplant waiting list, given distance and continuity of care issues." *Letter from University of Wisconsin*. [REDACTED] depends on the applicant to provide daily living assistance, transportation to her dialysis appointments, and physical, financial and emotional support. *See Letter from [REDACTED]* *see also Letter from Fresenius Medical Services*, dated July 25, 2007 (noting the physical and emotional demands of hemodialysis).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc). The applicant bears the burden of showing that the favorable factors are not outweighed by the adverse factors. *See Matter of Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). Additional positive considerations include:

family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this

country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Matter of Mendez-Morales, 21 I&N Dec. at 301. The underlying fraud or misrepresentation for which an applicant seeks a waiver of inadmissibility may be considered as an adverse factor in adjudicating the waiver application in the exercise of discretion. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568-69. Additional adverse factors include:

the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country.

Matter of Mendez-Morales, 21 I&N Dec. at 301.

The AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. The adverse factors in this case include the applicant's procurement of a U.S. visa by willful misrepresentation, and his employment in the United States without authorization. The favorable and mitigating factors in this case include the extreme medical hardship to the applicant's spouse that would be caused by the denial of a waiver, the applicant's ties to his U.S. citizen spouse and his lawful permanent resident father in the United States, and the applicant's lack of a criminal record. See *Matter of Mendez-Morales*, 21 I&N Dec. at 301.

Given the potentially life-threatening consequences that would befall the applicant's spouse upon separation or relocation, the AAO finds that the favorable factors in this case outweigh the adverse factors, and that a grant of relief in the exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.