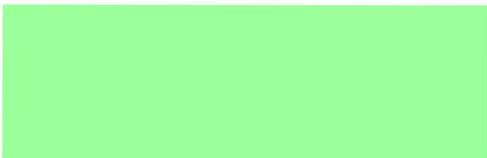


(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **SEP 17 2014** Office: NEBRASKA SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit through fraud or misrepresentation, and section 212(a)(9)(B)(i)(II) of 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 again seeking admission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility to reside in the United States with her lawful permanent resident spouse.

The service center director found that the applicant had established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility, but denied the waiver application as a matter of discretion. *See Decision of the Director* dated January 22, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the director's decision erred by focusing only on the negative factors and minimizing positive factors weighing in the applicant's favor. With the appeal counsel submits a brief. The record contains statements from the applicant and her spouse, a psychological evaluation of the applicant's spouse, financial documentation, school records for the applicant's children, and letters of support from family and friends. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

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.

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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

The record reflects that the applicant entered the United States without inspection in 1992 and applied for asylum in 1995. Her asylum application was referred to an immigration judge, where the applicant withdrew her asylum application and requested voluntary departure. The immigration judge denied voluntary departure and ordered the applicant removed in December 1995. The applicant appealed the decision, the appeal was ultimately dismissed by the Board of Immigration Appeals, and the applicant was removed from the United States in December 2004. The director determined that the applicant had made material misrepresentations to the U.S. consulate in London by claiming that she had entered the United States via the visa waiver program, in her asylum application by claiming that she had lived her entire life in India, and to the immigration court by claiming that she had moved to Canada, thus attempting to avoid removal from the United States. The director also found that the applicant had accrued unlawful presence of more than one year in the United States from April 1, 1997, with the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) establishing unlawful presence, until May 15, 1998, when she filed a motion to reopen the December 1995 removal order.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As the director found that the applicant had established extreme hardship to a qualifying relative due to her inadmissibility we will not address that determination on appeal.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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. . . . The favorable 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

In denying the waiver application the director found that the applicant had a pattern of disregarding immigration laws by misrepresenting material facts to obtain immigration benefits and avoid deportation. The director also noted that the applicant had entered the United States without inspection and then remained for more than 14 years.

On appeal counsel asserts that that the applicant's misrepresentations occurred more than 20 years ago and do not represent the applicant today. Counsel points out positive factors in the applicant's favor, including the financial impact, psychological harm, and loss of consortium for her spouse, and that the applicant has other family members residing in the United States. Counsel states that prior to removal the applicant had been critical to helping manage the family liquor store business and took shifts to allow her spouse and son days off. Counsel states that the applicant also prepared meals for her family to assure they were healthy. Counsel states that when removed from the United States the applicant took her then-10-year-old daughter with her to the United Kingdom, and that the applicant has remained outside of the United States for nearly 10 years, where others would have sought to return illegally. Counsel further states that the applicant has no criminal history and that she reports having worked as a housekeeping supervisor in a hospital since 2006. Counsel asserts that the applicant has been gainfully employed, has made sacrifices for her family, and has now let her daughter return to live with the applicant's spouse so she can attend college in the United States.

The favorable factors in this matter are the hardships the applicant's spouse and children face if the applicant is not granted this waiver, the applicant's support from her spouse and family in the United States, her apparent lack of a criminal record, and her employment in the United Kingdom since being removed from the United States. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States and her misrepresentations to obtain an immigration benefit.

The record reflects that the applicant entered the United States without inspection in May 1992, after which she applied for asylum in 1995 by claiming that she had joined [REDACTED] in 1989 and the [REDACTED] in 1992 and that she had been tortured by Indian authorities for her political affiliation. The applicant's asylum application was referred to the immigration court, placing her in deportation proceedings. The record reflects that in 1995 the applicant requested voluntary departure, informing the immigration court of a specific date that she planned to leave the United States to settle in Canada. The record shows that the court subsequently received written notice from the applicant that she had left the United States, but despite warnings from the court the applicant failed to provide proof of presence in Canada. The record shows that the applicant failed to appear for multiple immigration hearings, and was ordered deported in absentia in December 1995. In a May 1998 motion to reopen the removal order the applicant stated that she had been residing at the same address in the United States and had never left. In a 1999 BIA decision the Board found that the applicant had committed fraud upon the immigration judge by intentionally providing a false Canadian address and then by indicating in a motion to reopen that she had been continually living at that same California address when an order sent to that address had been returned as undeliverable.

In this case the record shows repeated, willful misrepresentations over several years by the applicant to U.S. government officials. Although in the applicant's asylum application she claimed that she had lived in India prior to coming to the United States, that her three children had been born there, and that she had joined political organizations in 1989 and 1990 before being arrested and tortured by authorities, the record reflects that the applicant in fact had been living in the United Kingdom, where she married in 1977, had children born in 1979 and 1982, received citizenship in 1989, and

obtained a passport in 1990. The record further reflects that the applicant misrepresented her residential address to the immigration court, thereby seeking to avoid a removal order. In 2006 she informed the U.S. consulate in a non-immigrant visa application that she had entered the United States via the visa waiver program in October 1990 when in fact she had entered without inspection in May 1992.

We note that a finding of extreme hardship carries considerable weight in the exercise of discretion and have carefully considered the extent to which the applicant's spouse's hardship mitigates the negative factors in this case. While we regret the hardship that the applicant's spouse faces as a result of a denial of the applicant's waiver request, we do not find the favorable factors in the present matter to outweigh the negative factors of the applicant's repeated and elaborate misrepresentations to U.S. government officials over a significant period of time and thus will not favorably exercise the Secretary's discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.