U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: ST. PAUL, MN Date: APR 29 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who procured admission into the United States on January 19, 1997, by presenting a passport and nonimmigrant visa belonging to another person. The applicant is therefore 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). The applicant married a United States (U.S.) citizen on August 12, 2000, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife.

The district director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen wife (Mrs. [redacted], and denied the application accordingly.

On appeal, counsel asserts that the Service (now known as the Bureau of Citizen and Immigration Services):

1) Improperly found that the applicant committed a crime involving moral turpitude by using a false social security card;
2) Failed to disclose that identity concerns were the true basis of the applicant's denial;
3) Misapplied the extreme hardship balancing test and improperly found that the applicant did not establish extreme hardship to his wife.

On appeal, counsel asserts that Mrs. [redacted] will move to Brazil if her husband's waiver is not granted and that Mrs. [redacted] would suffer extreme hardship because the standard of living is lower, there are less opportunities to work and go to school, she does not speak Portuguese, and she would have less access to medical treatment.

Counsel asserts that the district director's decision failed "to enumerate its true grounds for denial" and that the applicant was thus, "automatically denied his right to appeal as undisclosed reasoning [could not] be effectively reviewed." *See Appellate Brief* dated March 8, 2002 at 17. In support of her argument, counsel stated that two Service examinations supervisors indicated to her that the applicant's case was one of identity. Counsel additionally submitted a copy of an email from Officer Tammie Henning to support her claim.

Counsel's assertions are unsupported by the record. Counsel

did not provide the names of the supervisors she spoke to or the dates of the conversations, and she provided no other information to document that the claimed conversations took place. Furthermore, the email which counsel submitted is dated February 26, 2002 - 18 days after the district director's decision was issued. The email does not refer to the applicant by name or by alien number. To the contrary, the email makes only a general reference to a group of counsel's clients, by stating, [redacted] showed me the ***denials*** on Friday, and I had a brief time to review ***them*** . . . You may contact FOIA to review the ***files*** . . ." (emphasis added). No other information regarding the identity of the aliens or the basis of the denials was provided.

Moreover, the district director decision gives no indication that the applicant's identity was at issue. Rather, the decision reflects clearly that the applicant's true identity is known and that his attempt to use the identity of another person is the basis of his inadmissibility:

> The record shows that you claim to be a citizen of Brazil and your date of birth is January 9, 1975. You entered the United States on January 19, 1997, on a passport issued in another person's name and you used their identity. You are claiming eligibility for a waiver of Section 212(a)(6)(C) based on your relationship with [redacted] . . . . The record shows that you may have used a false Social Security card in order to gain employment at The Wrap and Café Budapest in Boston, Massachusetts, from 1997 until 2000. That action may be considered a crime involving moral turpitude.

See District Director Decision (Decision), dated February 8, 2002 at 3. In its conclusion, the Decision states:

> [Y]ou used a passport and identity of another person to enter the United States illegally. In addition, you have worked illegally in the United States with false documents. Your actions demonstrate a pattern of disregard for the laws of the United States and precludes a finding that you have demonstrated genuine rehabilitation . . .

Decision at 4.

On appeal, counsel asserts that the Decision provided no basis for the allegation that the applicant may have used a false social security card in order to gain employment at The Wrap restaurant and at Café Budapest. A review of the record, however, indicates that the applicant himself provided this employment history to the Service on his G-325 Biographic

Information form, dated January 22, 2001. Moreover, the fact that the applicant had a false social security card does not appear to be in dispute, since the applicant confirmed in writing that he gave the Service his false social security card during his adjustment of status interview. *See Affidavit of Cristian Correa Silva,* dated June 6, 2002.

Although the district director's decision discusses the applicant's lack of rehabilitation and erroneously states that the applicant's use of a false social security card may be considered a crime involving moral turpitude, the basis of the district director's denial is clearly the fact that the applicant procured admission to the U.S. by fraud or willful misrepresentation, an undisputed ground of inadmissibility under section 212(a)(6)(C) of the Act.

> The Service has carefully weighed the factors in your case. You have not established that you meet the criteria required to be eligible for a waiver of inadmissibility under Section 212(a)(6)(C) of the Act. *See Decision* at 3.

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

> (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:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Despite statutory language to the contrary, counsel asserts on appeal that the Service should have considered hardship to the applicant's U.S. citizen child in its extreme hardship analysis. Counsel's argument is not persuasive.

As indicated above, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident ***spouse or parent***. Congress specifically does not mention extreme hardship to a U.S. citizen or resident child. Moreover, the Attorney General has the authority to construe extreme hardship narrowly, and although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Chumpitazi,* 16 I&N Dec. 629 (BIA 1978); *see also Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 568-69 (BIA 1999) provided a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included 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. *See Cervantes-Gonzalez* at 565-566.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

Counsel asserts that, unlike the spouse in *Cervantes-Gonzalez,* Mrs. [redacted] "had no idea when she got married and had a baby that it was possible that Respondent would not be able to remain in the U.S." *See Appellate Brief* at 6. Counsel's assertion is unconvincing, as it is directly contradicted by Mrs. [redacted] statement that:

> I met [redacted] in June 1999 . . . . In November 11, 1999, we became engaged to be married . . . I knew about [redacted] immigration status shortly after we met. He showed me the false immigration card and social security number he was using. He told me he wanted to prove to me that he loved me for me and was

> not marrying me for immigration reasons. He has always said that I am what is important, not the immigration papers. But I wanted my husband to obtain legal status in the US so I suggested that we apply. *See Affidavit of Sarah Silva,* dated February 1, 2001.

Counsel additionally asserts that Mrs. [redacted] would suffer economic hardship rising to the level of extreme hardship if her husband were removed from the U.S. Counsel refers to two unpublished Ninth Circuit Court of Appeals cases to support this argument. The unpublished cases have no precedential value. *See U.S. v. Krauth,* 738 F.2d 443 (Table)(8th Cir. 1984); *see also Naddy v. Hansen,* 738 F.2d 443 (Table) (8th Cir. 1984) (*discussing* Federal Reporter Rules on the precedential value of unpublished decisions in the 8th Circuit.) Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel also failed to demonstrate that Mrs. [redacted] would suffer extreme medical hardship in Brazil or that country conditions establish that Mrs. [redacted] would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Counsel raised the possibility that Mrs. [redacted] could have pregnancy-related problems in the future and that she might have inadequate access to medical facilities in Brazil. Mrs. [redacted] is not currently pregnant, however, and there is no evidence in the record to indicate that medical facilities in Brazil are inadequate. In addition, the physician's note indicating that Mrs. [redacted] is being evaluated for headaches and allergies and that she is not being treated for anti-anxiety because she is nursing, fails to establish that Mrs. [redacted] suffers from medical problems that would cause her extreme hardship in Brazil.

Counsel also asserts that Mrs. [redacted] would suffer extreme hardship because she was born and raised in the U.S., her entire family is in the U.S., and she would relocate to Brazil if her husband were removed from the United States. U.S. court decisions have repeatedly held, however, that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). *Matter of Pilch,* 21 I&N Dec. 627 (BIA) 1996), 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 (9th 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. *Hassan v. INS, supra,* held further that the 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, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.