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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FEB 28 2003

File: [redacted] Office: CHICAGO, ILLINOIS Date:

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)

IN 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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to remain in the United States and reside with her spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the applicant was not given the opportunity to properly document her waiver application. Counsel also asserts that the decision of the district director failed to consider all of the appropriate factors delineated in Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

The record reflects that the applicant admits to having procured admission into the United States in 1994 by presenting a fraudulent nonimmigrant visitor's visa.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
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> * * *
>
> (6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-
>
> * * *
>
> (C) MISREPRESENTATION.-
>
> (i) 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) of the Act states:

> ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-
>
> (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).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Cervantes-Gonzalez, supra.

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

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 on a qualifying family member. 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 Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, supra, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record contains documentation including letters from the applicant and her spouse, the spouse's naturalization certificate, the couple's marriage certificate, their child's birth certificate, a letter from the spouse's employer, evidence that the couple jointly hold the mortgage on their home, a letter from a licensed clinical psychologist, tax return statements for tax years 1998 through 2001, medical insurance and vehicle registration information, and family photographs.

On appeal, counsel states that the district director failed to consider the various hardship issues relating to the applicant's minor child; the existence of substantial property ties acquired by the couple in the United States, and the financial obligations associated with that property; the applicant's significant community ties and her husband's lengthy residence in the United States; the applicant's lack of employment opportunities in Poland; the lack of property ties for the couple in Poland; the absence of any other aggravating violations of immigration laws; the existence of health and life insurance for the family in the United States and the absence of such insurance in Poland; and the existence of approved visa petitions filed by the applicant's spouse on behalf of his mother and brother in Poland.

The record reflects that the applicant and her spouse, also a native of Poland, were married in March 1996. The spouse initially came to the United States in 1990 as a student, acquired lawful permanent residence through the Lottery/Diversity program, and subsequently naturalized as a citizen of the United States in February 2001. The couple has a daughter born in the United States in July 1998. The applicant is unemployed and her spouse is a construction worker earning $37,571 in tax year 2001. The couple have a $100,000.00 mortgage on a home purchased in July 2000 and own two cars having a combined value of $7,000.00. The spouse carries medical and life insurance for the family provided through his employer.

The applicant's spouse states in his letter, dated July 15, 2002, that the applicant's removal would break apart their love and togetherness. He states that as the father of the family, he works and provides for necessities. He states that the applicant is a wonderful wife and mother who prepares all of the family's meals, keeps their apartment neat, does the laundry, and takes care of their daughter.

The report from a licensed clinical psychologist, dated July 10, 2002, indicates that the applicant requested an evaluation to assess how her removal from the United States would affect her and her family. The report states that the applicant is psychologically stable, of sound judgement, and good character; that her relationship with her family is close and she entertains dreams of a better life for herself and her family in the United States. The report concludes that the applicant's removal to Poland would pose undue psychological hardship on everyone in the family and is not in the best interests of the applicant and, especially, her child. There is no evidence contained in the record that the applicant's spouse has a significant condition of health, either psychological or physical, for which treatment would be unavailable in Poland.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991).

There are no laws that require a United States citizen to leave the United States and live abroad. 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The 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.

It is also noted that the Ninth Circuit Court of Appeals in Carnalla-Muñoz v. INS, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in Matter of Tijam, Interim Decision 3372 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States in 1994 by fraud and married her spouse in 1996.

She now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

A review of all of the factors presented, and the aggregate effect of those factors, fails to establish that the applicant's spouse (the only qualifying relative in this matter) would suffer extreme hardship over and above the normal disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the favorable or unfavorable exercise of the Attorney General's 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. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.