U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

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

[redacted]

FEB 28 2003

FILE: [redacted] Office: San Francisco 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: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was admitted to the United States on May 16, 1985, as a nonimmigrant visitor with authorization to remain until November 15, 1985. The applicant's husband, [redacted] filed for divorce in [redacted] Nevada and a final decree was granted on July 8, 1985. On August 14, 1985, the applicant's mother, a naturalized U.S. citizen, filed a Petition for Alien Relative on behalf of the applicant to have her classified as the unmarried daughter of a U.S. citizen.

The applicant applied for and was issued a nonimmigrant visa along with her two sons for the purpose of visiting Disneyland for two or three weeks. The applicant signed the nonimmigrant visa application and failed to indicate that her mother was living in the United States in Block 33. The applicant filed an Application for Status as Permanent Resident (Form I-485) on August 14, 1985. The application was denied as a matter of discretion after finding the applicant to be inadmissible under former section 212(a)(19) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(19), now codified as section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On October 15, 1987, the applicant married [redacted] in San Francisco. On May 13, 1998, she gave birth to a son fathered by her former husband. In January 1995, the applicant filed a second Form I-485 application in her maiden name, [redacted] there is no reference on her Form G-325A of her marriage to [redacted]. She lists [redacted] as a prior spouse. However, the record contains a 1995 and 1996 Federal Income Tax return in the name of [redacted]

The district director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured a nonimmigrant visa by fraud or willful misrepresentation and used that document to procure admission into the United States in 1985. The applicant seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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, the applicant disagrees with the conclusions drawn by the district director. The applicant discusses her father, who retired from working for the U.S. Embassy in Manila after 29 years and immigrated on a Special Immigrant visa along with the applicant's mother and ten siblings.

Section 212(a)(6)(C) of the Act provides, in 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.
>
> (ii) Any alien who falsely represents, or has falsely represented himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law 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).

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. Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed fraud or misrepresentation. These amendments are applicable to pending cases. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Congress has increased the penalties on fraud and willful misrepresentation, 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. 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*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (the Board) 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.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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.

When the waiver application was initially filed in November 1996, the applicant listed her mother and father as eligible family members and referred to her eligibility as the unmarried daughter of a U.S. citizen. An Affidavit of Support was submitted by the applicant's mother on November 11, 1996, listing the applicant's marital status ad divorced. No mention was made of her U.S. citizen spouse or her second marriage in October 1987. On May 11, 2001, the waiver application was denied still with reference to the applicant being classified a the unmarried daughter of a U.S. citizen.

The applicant refutes the Service's conclusions and states on the appeal filed on June 1, 2001, that she is submitting evidence that she has withheld and delayed submitting, including her marriage certificate showing her marriage to [redacted] in 1987 and her son's, [redacted] birth certificate. The applicant states that she married in order to be independent and not for the purpose of evading immigration laws.

The Associate Commissioner finds that the applicant's failure to list the name of her present spouse in Part 3-B of her Form I-485 application and on her Form G-325A filed under oath in January 1995, and reviewed under oath before a Service officer on November 12, 1996, as a clear and obvious attempt to evade immigration laws.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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.