U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FIL[redacted] Office: SAN FRANCISCO Date: JAN 14 2003

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT:

[redacted]

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 attempted to procure a benefit by fraud or willful misrepresentation in 1992. The applicant married a native of Nigeria in October 1990 and her husband became a naturalized U.S. citizen in December 1995. The applicant is the beneficiary of a Petition for Alien Relative that remains unadjudicated in the record. The applicant seeks the above waiver in order to remain in the United States and reside with her spouse.

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 submits medical evidence that the applicant's husband suffered a stroke in June 2001 and requires full time care and assistance from his wife. The physician indicates that the husband has physical and cognitive limitations and impairments that require his wife's help in all aspects of life and it would be impossible for him to function independently at this time or any time in the future.

The record indicates that in an April 1997 interview the applicant alleged that she was initially present in the United States in 1983, having entered with a valid passport and visa. She claims that the passport was later stolen. There is no evidence in the record to verify this entry. Her I-130 petition for alien relative, I-485 application to adjust status, and I-765 application for employment authorization, all submitted in 1996, and notes from her April 1997 interview, all indicate she last entered the U.S. illegally through San Ysidro, CA, in November 1989. On her fraudulent 1992 TPS application the applicant alleged that she arrived in the U. S. on a cargo ship as a stowaway, landing in New York. There is no indication of when she left the U.S. after 1983.

The record reflects that the applicant applied for Temporary Protected Status (TPS) in 1992, representing herself as a citizen of Liberia. This application was accompanied by several affidavits confirming her Liberian nationality and residence in Maryland. The applicant failed to disclose this fact during her adjustment of status interview in April 1997. She initially denied ever having lived in Maryland or having filed any previous application with the Service, though pictures submitted with the TPS application confirmed that the applications were submitted by the same person. The applicant also submitted a birth certificate with her adjustment of status application that alleged that she was born in

Lagos Island, Nigeria. An investigation by the Anti-Fraud Unit of the American Embassy in Lagos determined that the birth certificate was fraudulent. Lagos Island has no official record of her birth.

The record also reflects that the applicant began working without Service authorization in 1988.

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.

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. 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 (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.

A review of the recently submitted documentation relating to the husband's medical problems and physical condition, when considered in its totality, reflects that the applicant has now shown 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.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

In its analysis conducted in Matter of Cervantes-Gonzalez, the BIA found cases involving suspension of deportation and other waivers of inadmissibility to be helpful given that both forms of relief require extreme hardship and the exercise of discretion. The BIA continued in Cervantes to state that, "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). The Associate Commissioner is bound by that decision.

In Matter of Cervantes-Gonzalez, the Board also held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion. Matter of Tijam, 22 I&N 408 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in Matter of Alonso, 17 I&N Dec. 292 (Comm. 1979); Matter of Da Silva, 17 I&N Dec. 288 (Comm. 1979), and noted that the United States Supreme Court ruled in INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996), that the Attorney General has the

authority to consider any and all negative factors, including the respondent's initial fraud.

The favorable factors include the applicant's family ties, the absence of a criminal record, and extreme hardship to the qualifying relative.

The unfavorable factors include the applicant's numerous fraudulent acts described above, illegal entry, extended periods of unlawful presence, and working without Service authorization.

The applicant's actions in this matter cannot be condoned. She has consistently provided fraudulent documents and information to the Service in order to obtain benefits. It is concluded that the unfavorable factors in this matter outweigh the favorable ones.

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.