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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: Los Angeles Date: JUN 11 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]

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 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

JUN11 03-03H2212

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Peru 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 in August 1988.

Documents in the record indicate that the applicant was admitted to the United States as a nonimmigrant visitor on April 8, 1992. These documents also state that the applicant married [redacted] a U.S. citizen, in April 1993 and that she became the beneficiary of a Petition for Alien Relative. She failed to appear for two adjustment of status interviews scheduled in February 1994 and May 1994, and the visa petition was denied for lack of prosecution. In a statement under oath on August 3, 2000, the applicant stated that she never married [redacted] The applicant indicates that a reverend from Pomona, California told her that he worked for an attorney and would help her, so she signed several papers. The applicant stated that she paid him $2400 and received a work permit, which eventually was found to have been obtained fraudulently. The record also contains a statement by the applicant that her alleged marriage never occurred and that she was a victim of notary fraud. Other documents indicate that she was part of an investigation of an attorney who was eventually disbarred.

The applicant became the beneficiary of a Petition for Alien Relative filed by her naturalized U.S. citizen mother that was approved on September 22, 1995. The applicant indicated on her Form G-325A dated October 29, 1996, that she married German Suito in February 1984. 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, counsel submits current documentation relating to the multiple health problems of the applicant's mother (hereafter referred to as Mrs. [redacted]) consisting of a psychological assessment, a neurological assessment report, a radiology report, an operative report, a list of items Mrs. [redacted] is allergic to, and documentation relating to the health of the applicant's father, Dardo Acuña, who is also a qualifying relative.

The record reflects that the applicant procured admission into the United States in August 1988 by presenting a Mexican passport, though she was never a citizen of Mexico.

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 [now Secretary of Homeland Security] 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.
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> (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.

After a review of the medical considerations in the record relating to both of the applicant's parents, it is concluded that extreme hardship would be imposed upon the qualifying relatives if the applicant were to return to Peru.

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 she may by regulations prescribe.

In its analysis conducted in *Matter of Cervantes-Gonzalez, supra*, (BIA 1999), a section 212(i) matter, the Board 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 Board 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-Morales*, 21 I&N Dec. 296 (BIA 1996). The AAO is bound by that decision.

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

The unfavorable factors include the applicant's procuring admission into the United States by fraud or willful misrepresentation, the applicant's employment without valid Service authorization, and her lengthy stay in the United States without Service authorization.

Although the applicant's actions in this matter cannot be condoned, the record reflects that the applicant performs a necessary and required function in the life and care of her two parents who are living separately. Therefore, the favorable factors in this matter outweigh the unfavorable 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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.