U.S. Department of Homeland Security
Street Address
City, State Zip Code

U.S. Citizenship and Immigration Services

Date: MAY 1 1 2009

[redacted]

File Number: [redacted]
Receipt Number: [redacted]

NOTICE OF DECISION

Your application for waiver of grounds of inadmissibility (Form I-601), pursuant to section 212(i) of the Immigration and Nationality Act, is denied for the following reason:

See Attachment

If you wish to appeal this decision, you may do so. Your notice of appeal must be filed within 30 days from the date of this notice. If no appeal is filed within the time allowed, this decision is final. Appeal in your case may be made to the Administrative Appeals Office on Form I-290 B.

If an appeal is desired, the Notice of Appeal shall be executed and filed by mail with this office, at [local USCIS office address]. A fee of $585 is required to file a Form I-290 B. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal.

David Douglas
Field Office Director
Signed for by:
Benjamin Oldendorf

David Douglas
Field Office Director

cc:

Prepared By: Benjamin Oldendorf, ISO

ATTACHMENT

Applicant: [redacted]
Application for Waiver of Grounds of Excludability, Form I-601
Alien Number: [redacted]
Receipt Number: [redacted]

PROCEDURAL HISTORY

On April 27, 2007, you submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to have your immigration status adjusted to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Immigration and Nationality Act (INA). You were attempting to immigrate on the basis of a petition filed by [redacted]. On August 1, 2008, you submitted an Application for Waiver of Grounds of Inadmissibility (Form I-601), seeking relief under section 212(i) of the INA.

When you entered the United States on October 13, 1990, you entered using someone else's passport and visa..

APPLICABLE LAW AND DISCUSSION

INA § 245(a) provides:

> (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence and (3) an immigrant visa is immediately available to him at the time his application is filed. (emphasis added)

INA § 212(a)(6)(C)(i) provides:

> 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.

INA § 212(i) provides:

> The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an immigrant lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General **that the refusal of admission ... of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien ....** (emphasis added)

ATTACHMENT

Applicant: [redacted]
Application for Waiver of Grounds of Excludability, Form I-601
Alien Number: [redacted]
Receipt Number: [redacted]

The approval of an application for a waiver pursuant to 212(i) "...is dependent in part upon a showing of extreme hardship, and thus only in cases of great actual or prospective injury to a spouse will the bar be removed." *Matter of Ngai*, 19 I. & N. Dec. 245 (Comm'r 1984).

The Supreme Court has indicated that a narrow interpretation of the phrase "extreme hardship" is consistent with the exceptional nature of suspension relief, and that the mere showing of economic hardship to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), cited in *Matter of Pilch*, 21 I. & N. Dec. 627 (BIA 1996). In *Matter of Cervantes-Gonzalez*, 22 I. & N. Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) suggested several factors to be considered in determining extreme hardship, including family ties to U.S. citizens or to aliens lawfully admitted for permanent residence; the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's ties outside the United States; the conditions existing in the country or countries to which the alien will be removed, if the qualifying relative would relocate to that country also, and the extent of the qualifying relative's ties to such countries; the financial impact of departure from this country; and the significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, if the qualifying relative chose to leave the United States with the alien. An additional factor is whether a qualifying relative who is going to remain in the United States will suffer extreme hardship due to the separation.

The term "extreme hardship" has been considered by the BIA on a number of occasions in the context of INA § 244(a)(1), in immigration court proceedings regarding suspension of deportation. For example, in *Matter of Kim*, 15 I. & N. Dec. 88, (BIA 1974), the BIA reiterated that extreme hardship is not a term of fixed and inflexible content or meaning, and a determination of extreme hardship depends upon the facts and circumstances peculiar to each case. In *Matter of Kim*, the BIA found that the alleged future inability of the applicants for suspension of deportation to find suitable employment if they returned to their country of origin did not constitute extreme hardship. The BIA further found that the applicants' claim that their United States citizen children would be deprived of the educational and economic advantages available to United States citizens in this country also did not constitute extreme hardship.

Similarly, in *Matter of Anderson*, 16 I. & N. Dec. 596, (BIA 1978), the BIA explained that "the United States enjoyed a higher standard of living than most countries of the world, and that "... most deported aliens will likely suffer some degree of financial hardship." The BIA concluded that "[n]onetheless, we do not believe that Congress intended to remedy this situation by suspending the deportation of all those who will be unable to maintain the standard of living at home which they have managed to achieve in this country. ..."

Furthermore, federal courts have held that the extreme hardship requirement was not enacted to ensure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. Courts have also held that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

ATTACHMENT

Applicant: [redacted]
Application for Waiver of Grounds of Excludability, Form I-601
Alien Number: [redacted]
Receipt Number: [redacted]

Finally, a showing of extreme hardship simply *permits*, but does not *require* the granting of a waiver. *Matter of Cervantes-Gonzalez, supra*, 22 I. & N. Dec. at 566. "[E]stablishing extreme hardship does not create any entitlement to relief." *Id.* Once extreme hardship is established, "it is but one favorable discretionary factor to be considered." *Id.* Thus, even if extreme hardship is established, the waiver may still be denied, as a matter of discretion. *Id.*

Based on your misrepresentation by using entering the United States, you are found inadmissible pursuant to INA § 212(a)(6)(C)(i). You are eligible to apply for a waiver. However, your waiver has been denied because you failed to establish extreme hardship.

CONCLUSION

You are ineligible to adjust your status to that of lawful permanent resident under INA § 245(a) based on your inadmissibility under INA § 212(a)(6)(C)(i). Your application for waiver of grounds of inadmissibility is denied as a matter of law.