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FILE:

Office: PHOENIX, ARIZONA

Date: **AUG 04 2004**

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her Lawful Permanent Resident (LPR) mother. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her LPR mother and U.S. citizen child.

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Interim District Director's Decision* dated July 24, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent 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 the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants 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.

To recapitulate, the record reflects that on August 15, 1991, the applicant knowingly attempted to use a Temporary Resident Card (Form I-688) that did not belong to her in an attempt to gain admission into the United States by fraud and willful misrepresentation of a material fact. The applicant was returned to Mexico. In an affidavit presented by the applicant she admits that she entered the United States illegally in September 1991. Furthermore the applicant admits that she traveled to Mexico in 1995 for a visit, applied and received a border-crossing card and attempted to enter the United States. She was denied entry and was allowed to return to Mexico. The applicant then reentered illegally and has been present in the United States

since 1995 without a lawful admission or parole. The applicant is inadmissible under section 2121(a)(6)(C)(i) of the Act.

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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to her LPR mother.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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 significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel states that Citizenship and Immigration Service (CIS) failed to correctly assess the extreme hardship the applicant's mother (Ms. [REDACTED]) would suffer if the applicant's waiver application were denied and she was forced to depart the country. Counsel states that the applicant helps her parents with their day-to-day activities. In addition counsel asserts that CIS did not weigh all the factors involved including that the applicant was only 20 years old in 1991 when the misrepresentation incident took place. Counsel further states that the applicant has both parents as qualifying relatives who would suffer extreme hardship if she were not granted permanent resident status.

Before the AAO can weigh the favorable and unfavorable factors in this case it must first determine if the qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

No documentary evidence was provided to substantiate the claim that the applicant's presence in the United States is necessary in order to assist her parents with their day-to-day activities. Counsel provides no evidence to show the applicant's parents cannot take care of themselves and their daily chores. The record of proceedings contains affidavits from the applicant and from Ms. [REDACTED]. These affidavits do not discuss hardship to the applicant's parents and no other information or evidence was submitted to support counsel's assertion that the applicant's parents would suffer extreme hardship if the applicant were removed from the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be

expected upon deportation. *Hassan v. INS, supra*, held further that 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her LPR parents would suffer extreme hardship if she were removed from the United States. 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.