

identify any data deletion
prevent clearly marked
invasion of personal privacy

H 2

U.S. Department of Homeland Security
20 Massachusetts Avenue N.W. A3042
Washington, DC 20529

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: San Francisco, CA

Date: 06/12/2006

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[Redacted]

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 District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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). The applicant married [REDACTED] hereinafter, [REDACTED] a United States citizen, on November 19, 1999 and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 with his wife.

The District Director concluded that the applicant willfully misrepresented himself to immigration officials in applying for entry to the United States. Additionally, the District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director* dated August 20, 2002.

On appeal, counsel contends that [REDACTED] will experience extreme hardship if the applicant is refused admission to the United States. Counsel submitted a brief, declarations from the applicant and [REDACTED] letters from family members, letters from friends, letters from employers, financial records, articles on single-parents, and reports on country conditions in Mexico. The entire record was considered in rendering this decision.

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:

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by Ms. Carrillo. 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).

The concept of extreme hardship "is not . . . fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be "[t]he most important single [hardship] factor," and "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact on [REDACTED] of the applicant's departure from the United States. Counsel asserts that [REDACTED] cannot support herself and her son without the applicant's income, and that other family members rely on the applicant's income. [REDACTED] earns a modest income, but she is young (23), and no evidence was provided to show that she would be unable to obtain other employment. [REDACTED] parents are divorced and live in United States. No evidence was provided to show that [REDACTED] parents would be incapable of providing her with financial assistance. [REDACTED] father filed an affidavit of support for the applicant; the father earns an income comparable to the applicant's. Finally, [REDACTED] has the option of moving to Mexico with the applicant. The applicant's parents live in Chamacuaro, Guanajuato, Mexico, where the applicant's father has a small business. If the applicant and [REDACTED] could not live there, they could relocate to another part of Mexico where suitable employment might be available. Accordingly, the applicant has not demonstrated that his removal to Mexico would cause serious financial hardship to [REDACTED].

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. Counsel submitted reports on country conditions in Mexico for the year 2001 from the United States Department of State, Amnesty International, and Human Rights Watch. Counsel does not explain how any of the human rights abuses referred to in the reports relate to the applicant or [REDACTED] therefore the applicant has not demonstrated that [REDACTED] would experience hardship because of country conditions in Mexico.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. Neither counsel nor the applicant asserts that [REDACTED] has any health condition, therefore the applicant has not shown that Ms. Carrillo would experience health-related hardship if the applicant were removed to Jamaica.

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. Counsel maintains that separating the applicant from [REDACTED] and their son would cause severe emotional hardship. Counsel does not specify what the possible emotional consequences would be, nor does he provide documentation addressing why [REDACTED] could not adjust to the separation. The record contains a variety of letters from family and friends. While some of the letters refer in a general way to the possible emotional effect of separating the applicant from [REDACTED], all of the letters are evidence of a substantial support network that [REDACTED] can rely on if the applicant returns to Mexico. Counsel referred to the potential effects of separating a three year-old child from his father, however, the applicant's son is not a qualifying relative for establishing extreme hardship. Counsel submitted several articles explaining the negative effects on children of not having their fathers around. Counsel does not explain how these articles specifically relate to the applicant's situation. It should be noted that there are millions of single parents in the United States, so the applicant is not facing an unusual situation. Finally, as a United States citizen, [REDACTED] has liberal rights to travel outside the United States and can visit the applicant in Mexico.

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, 468 (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. The AAO recognizes that Ms. Carrillo will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decision of the District Director is affirmed.

ORDER: The appeal is dismissed.