



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

IN RE:

[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]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and 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 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized United States citizen. 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 her spouse and child.

The acting district director concluded that the applicant had 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 Acting District Director*, dated July 29, 2003.

On appeal, counsel asserts that the applicant did not engage the services of an attorney to assist in the preparation of the Form I-601 waiver application. Counsel contends that Citizenship and Immigration Services did not have adequate information to determine the extreme hardship presented in the application. *Form I-290B*, dated August 15, 2003.

In support of these assertions, counsel submits a brief, dated September 24, 2003; an affidavit of the applicant's spouse, dated September 15, 2003; an affidavit of the applicant, dated September 23, 2003; two color photographs of the applicant with her spouse and child and 12 letters of support on behalf of the applicant. The record also contains an affidavit of the applicant, dated November 7, 2001; a copy of the United States birth certificate of the applicant's son; copies of medical records for the applicant; a copy of the marriage certificate of the applicant and her husband and copies of financial and tax documents for the applicant and her husband. The entire record was considered in rendering this decision.

The record reflects that during July 1998, the applicant presented a fraudulent passport in order to obtain admission to the United States.

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.

The AAO notes that the decision of the acting district director refers to the applicant's marriage as an "after-acquired equity" finding that the applicant and her spouse wed after the applicant illegally entered the United States. Counsel contends that the acting district director errs in this assessment, as the applicant and her spouse were married in Mexico prior to her admission to the United States. *Brief in Support of Appeal*, dated September 24, 2003. The AAO finds that the applicant and her spouse were married as contended by counsel and the portions of the decision of the acting district director indicating that the couple married after the applicant's entry are in error. *Marriage Certificate*, dated June 27, 1998.

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 lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel states that the applicant's spouse is a native of Nicaragua who is now a naturalized United States citizen and his parents and siblings are also naturalized United States citizens. *Brief in Support of Appeal*. Counsel contends that the applicant's husband has no nexus to Mexico and has resided in the United States since 1989. *Id.*

Counsel fails to establish that the applicant's husband will suffer extreme hardship if he remains in the United States maintaining proximity to his family members. The applicant's husband states that he does not want his son to grow up in poverty in Mexico, however the record fails to establish that the applicant's son, as a United States citizen, cannot remain in the United States with his father in order to maintain access to "good medical care, good education, and a good future." *Affidavit of Adriana Miranda*, dated September 23, 2003. Counsel contends that since Mexico is a poor country, the applicant will depend on her husband to provide her with money for survival. *Id.* The AAO recognizes that the maintenance of two households may cause hardship to the applicant's spouse, however the record fails to establish that the financial hardship imposed on the applicant's spouse would rise to the level of extreme if he needed to provide financial support to the applicant in a location outside of the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*,

450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, his 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 she 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. *See* 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.