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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: APR 07 2005

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. On appeal, counsel contends that the applicant's husband would suffer extreme emotional and financial hardship if the applicant is removed.

Counsel submits, among other documentation, country conditions information on Mexico, two letters from the family physician, a psychological report for the applicant's husband, several letters of support, and family financial information. The AAO has reviewed the entire record and concurs with the district director's assessment that the applicant failed to demonstrate extreme hardship to her spouse.

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 record reflects that the applicant attempted to enter the United States in 1996 by knowingly presenting an alien registration card in another individual's name. The applicant was excluded and deported to Mexico at that time. She is thus subject to the grounds of inadmissibility described at § 212(a)(6)(C) of the Act.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

Counsel contends that the applicant's spouse, who has lived in the United States since he was 18 years old, would suffer extreme hardship if he relocates to Mexico, as his immediate family members reside in the United States. Counsel also maintains that the applicant's husband would have difficulty finding employment in Mexico, and that he would lose his property in the United States. Counsel states that in Mexico, the applicant's husband would face difficulties in caring for his father, who is diabetic and suffers from senile dementia. The AAO acknowledges that the applicant and her spouse may be required to alter their lifestyle as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse would be unable to support himself if he chose to return to Mexico. It is noted that 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. The evidence on the record also does not establish that the applicant's husband would be unable to find suitable care for his father in Mexico.

Counsel asserts that the applicant's husband would suffer extreme emotional stress if he remains in the United States without the applicant. Counsel points out that the applicant cares for her father-in-law, a fact that gives the applicant's husband great peace of mind. In support of this contention, counsel submits a letter from [REDACTED] who writes that the applicant and her family have been patients of his for three years. [REDACTED] writes that the applicant's presence is critical to the applicant's husband's and father-in-law's well-being, because she takes care of her father-in-law. While the AAO recognizes that the applicant's husband may feel more comfortable having the applicant care for his father, the record does not establish that the applicant's absence and consequent inability to care for her father-in-law would cause her husband to suffer extreme hardship. It has not been shown that the applicant is the only individual capable of or available to care for her father-in-law.

Counsel also states that the applicant's husband's depression and anxiety would worsen upon the applicant's departure. In support of this assertion, counsel submits a report prepared by [REDACTED] Ph.D., based on a single interview of undetermined duration conducted on February 12, 2004. [REDACTED] performed several standard psychological tests and concluded that the applicant's husband is depressed and anxious due to the applicant's immigration problems. Dr. [REDACTED] warned that suicidal thoughts could become more frequent due to the increasing stress of the situation. Despite noting the stress-related symptoms the applicant's husband is suffering, the evaluation does not indicate that the applicant's husband is in danger of harming himself or others or of becoming incapable of taking care of

himself or carrying out his daily activities. The psychologist did not recommend any psychiatric or other medical therapy, nor does the record contain evidence that the applicant's husband has sought treatment for the symptoms of his depression.

Counsel also provides a letter written by the above-mentioned Dr. [REDACTED] regarding fertility treatments undergone by the applicant and her husband. Counsel asserts that the stress caused by the applicant's inadmissibility may contribute to the applicant's and her husband's difficulty in conceiving a child. The AAO notes, however, that while stress may be a contributory factor, it has not shown to be the cause of the applicant's and her husband's fertility challenges, nor does the record indicate that their problems cannot be treated.

The record fails to provide a basis for a finding of extreme emotional hardship suffered by the applicant's husband as a result of the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

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.

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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.