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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX Date: **AUG 10 2005**

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:

SELF-REPRESENTED

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 Interim District Director, Phoenix, 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent Alien Registration Receipt Card (Form I-551) in connection with her attempted entry into the United States on June 29, 1996, at the San Luis, Arizona port of entry. The applicant was permitted to return voluntarily to Mexico the same day. It appears that the applicant returned to the United States in August 1996. The record also reflects that the applicant was the beneficiary of a Petition for Alien Relative (Form I-130) filed by her lawful permanent resident husband, and approved on October 7, 1992. The applicant filed an application for adjustment of status (Form I-485) pursuant to section 245 of the Act on September 22, 1997. The applicant was interviewed in connection with her application for adjustment of status and a sworn statement taken on October 26, 2001, in which she admitted her 1996 attempted entry to the United States through the presentation of a fraudulent Form I-551. The then district director issued a Notice of Intent to Deny (NOID) with respect to the I-485 on December 11, 2001, finding the applicant inadmissible to the United States and giving her a period of ninety (90) days to submit evidence demonstrating that she was not inadmissible to the United States or an Application for a Waiver of Inadmissibility (form I-601). The applicant submitted a Form I-601 pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow her to remain in the United States with her United States citizen spouse. The application was filed on January 25, 2002, and was accompanied by two brief statements from the applicant, copies of her birth and marriage certificates, and a copy of her spouse's I-551, evidencing his status a lawful permanent resident.

The interim district director issued a decision denying the waiver application on December 11, 2003, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case her lawful permanent resident spouse. *Decision of the District Director*, dated December 11, 2003. The applicant submitted an appeal on January 8, 2004.

On appeal, the applicant submitted a statement in support of the appeal. The applicant takes issue with the district director's decision noting that she was appealing because there was "information that is not true and the letter states that I received material that I never received." *Applicant's Statement in Support of Appeal*, filed January 8, 2004. The applicant further states that she considers the decision unjust and would find it very difficult to leave the United States when her entire family resides in the United States and all her personal belongings, including the family home, are here. The applicant's statement additionally notes that she has resided in the United States for eight years and has worked legally, enclosing copies of her Employment Authorization Card (Form I-688B) and her Social Security Card. The applicant requests to be permitted to remain in the United States and become a legal resident. The Form I-290B and the applicant's statement sets forth little in the way of reasons why the district director's decision is erroneous and could be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(v). However, we will address the appeal on the merits noting that the applicant is self-represented.

The AAO will evaluate the case by examining the evidence before the district director, and will then address the applicant's contentions on appeal. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant sought the waiver on the basis of claimed hardship to her lawful permanent resident spouse. The evidence before the district director consisted primarily of the applicant's statements executed on January 19, 2002. The first statement addressed the applicant's ground of inadmissibility. In the statement, the applicant admitted her attempted use of a fraudulent Form I-551 in order to gain entry to the United States. She stated that she understands that her actions were wrong, apologized for her conduct, and asked that it be forgiven. *See Fraud Statement of Maria De Jesus Gutierrez De Murillo*, dated January 19, 2002. The applicant's second statement addressed the issue of hardship. In that statement, the applicant noted that if the waiver were not granted, her husband would need to constantly travel to Mexico to visit her and maintain the relationship. She noted that such visits would prove costly and her husband might not be able to afford them. The applicant further stated that the break-up of the family would have negative psychological effects upon her family, including her children. The applicant noted that this situation would harm the family relationships, and might lead to the termination of the marriage. Alternatively, she noted that if her husband were to return to Mexico it would be very difficult for him to find a good paying job, and that this difficulty could result in severe personal and economic consequences to the applicant, her husband, and her children. *See Extreme Hardship Statement of Maria De Jesus Gutierrez De Murillo*, dated January 19, 2002. No additional statements, or other evidence relating to the claimed hardship was offered. The remaining evidence consisted of a typed document setting forth the applicant's residence and employment history in the United States, copies of the applicant's birth and marriage certificate, and a copy of the spouse's permanent residence card.

The interim district director's decision reviewed the evidence in the record as well as the pertinent caselaw on the issue of extreme hardship but found that the applicant failed to demonstrate extreme hardship to her spouse, her only qualifying relative. The decision noted that the evidence did not demonstrate that the applicant's spouse would experience extreme hardship if he accompanied her to Mexico, as the evidence did not demonstrate that he would be unable to obtain employment in Mexico, and it was not established that it was necessary for him to remain in the United States for any particular reason, or that he had any major health issues for which he could not obtain adequate medical care abroad. The interim district director's decision further noted that the applicant's spouse had lived in Mexico during a "major and formative portion of his life." *Decision of the District Director*, dated December 11, 2003. Finally, the decision noted that alternatively, there was nothing that required the applicant's spouse to accompany her abroad and that any resulting separation would result in the normal hardship to be expected.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.
- (ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

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 himself 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, 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 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.

The majority of the documents offered serve to establish the relationship and identity of the parties. The two documents submitted with the Form I-601 that do substantively address the hardship issue are the applicant's statements. Those documents, while they support a finding that the applicant's spouse will experience some hardship based upon the separation from the applicant, do not establish that the hardship will be extreme. The record also indicates that the applicant believes that should the applicant's spouse return with her to Mexico,

he might encounter some difficulties in obtaining employment. While the AAO acknowledges that returning to Mexico would impose some hardship, it is noted that the applicant's spouse was, himself, born in Mexico, a fact that would serve to ease his transition due to the familiarity with the country, its language, and culture. Moreover, there is no objective evidence supporting a finding that the applicant could not obtain employment in Mexico, just the applicant's speculation. Moreover, it appears that the spouse has been engaged in agricultural work, which would appear to be a readily transferable skill enabling him to obtain similar employment in Mexico. More importantly, however, nothing requires the spouse to return to Mexico, and thus he could avoid the anticipated economic hardship by remaining in 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, 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 endure hardship as a result of separation from the applicant. However, his situation is completely unknown to the AAO due to the absence of evidence on this issue. Based upon the applicant's representations, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

In addition to the applicant's assertion that the evidence establishes extreme hardship, the appeal is also based upon the applicant's belief that there was inaccurate information in the record and that the applicant had reportedly been provided with material that she claims she did not receive. See *Notice of Appeal (Form I-290B)*, filed January 8, 2004. However, the AAO is unable to agree with the applicant's contentions after reviewing the district director's decision. A review of that decision does not shed any light on the applicant's concern about the decision being based upon incorrect information. Furthermore, the decision does not refer to any material having been provided to the applicant. The interim district director's decision does not reference information that was not submitted by the applicant herself and it appears that the decision was based exclusively upon a review of that information. Thus, the AAO is unable to agree with the applicant's contention that the decision is flawed for this reason. In addition, the decision does not make any reference to material having been sent to the applicant that was taken into consideration in the interim district director's decision. The AAO has likewise reviewed the information contained in the NOID issued by the previous district director, and reaches the same conclusion with regard to that decision. However, even if there had been an inaccuracy with respect to that decision, the applicant was given an opportunity to respond to the NOID before the interim district director issued the decision in which he denied the applicant's waiver application.

A review of the documentation in the record fails to establish extreme hardship to the applicant's spouse that would result from 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(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.