

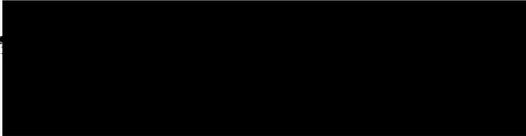
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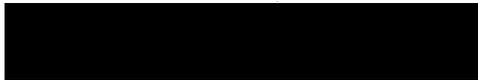


Office: SAN FRANCISCO, CALIFORNIA

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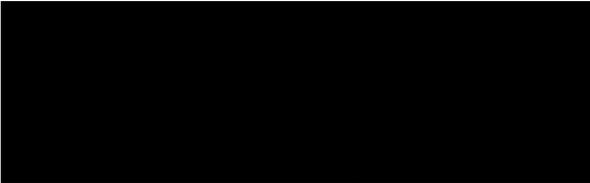
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act (INA), 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 District Director, San Francisco, California. The matter 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. The applicant was found inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On October 3, 2003 the applicant submitted a Form I-290B Notice of Appeal through her previous attorney, who asserted that the district director failed to correctly analyze the hardship factors affecting the applicant's husband. Attached to her Form I-290B, the applicant submitted a statement by her husband, a letter from her husband's ex-wife, a letter from her husband's employer, and a statement from a financial service.

The applicant has supplemented her appeal with further documentation submitted by her current counsel on December 13, 2004. In addition to the above-noted evidence previously submitted on appeal, counsel now submits more recent statements by the applicant and her husband, a statement by her husband's son, a statement by a friend, medical information for the applicant's husband, a psychological evaluation, and other documentation. The entire record was reviewed in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

The record reflects that the applicant admitted to having used a B-2 visitor's visa to enter the United States on numerous occasions, when in fact, she had been living and working in the United States since 1997. She therefore procured admission into the United States by willfully misrepresenting a material fact.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A § 212(i) waiver depends upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant, in this case, the applicant's U.S. citizen husband. Hardship to the alien herself or to her stepson is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 set forth a list of non-exclusive factors relevant to determining 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 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).

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 record in the instant case indicates that the applicant's husband is employed as a chef, and that he shares custody of his son with his ex-wife. The medical documentation indicates that he underwent eye surgery on October 19, 2004, and that it is recommended he remain in the United States for further monitoring of his ocular health. The AAO notes, however, that the doctor's letter is not typed on a physician's letterhead nor does it specify the exact nature of, or prognosis for, the applicant's husband's eye condition. The applicant's husband states that he will suffer extreme hardship if he relocates to Mexico, because he doubts that he would be able to afford or obtain proper medical treatment for his eye problems. He fears that his earning potential will be much less than in the United States, and he will not be able to support his son properly. He notes that he holds 51 per cent of his son's custody, that he is obliged to take care of his son, and that he is precluded from removing his son from California.

The AAO finds that the record contains evidence in support of the applicant's husband's claim that he would suffer extreme hardship if he leaves the United States and relocates to Mexico. However, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if he chooses to remain in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record contains a psychological evaluation of the applicant's husband prepared by psychologist Dr. [REDACTED]. Dr. [REDACTED] based her opinion on a single interview with the applicant's husband that took place on October 19, 2004. There is no evidence that Dr. [REDACTED] treated the applicant before or after that date. Dr. [REDACTED] writes that the applicant's husband suffers from depression and anxiety which is dependent on present and future stressors. Dr. [REDACTED] indicates that the applicant's husband is experiencing significant impairment in social, occupational, and interpersonal functioning, in that he is forgetful, listless, lacks appetite, and has difficulty sleeping. Dr. [REDACTED] believes that if the applicant's husband is forced to choose between his son and his wife, he will develop further psychiatric disorders.

The psychological evaluation does not indicate that the applicant's husband is in danger of harming himself or others, nor that the applicant's removal would cause him to become incapable of caring for himself or his son. The report contains a generalized recommendation that the applicant's husband be evaluated regarding the effectiveness of anti-depressant medication and notes that he will likely require "intervention" to recover a normal level of functioning. The documentation on the record does not establish that the applicant's psychological response to this stressful situation is unusual.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.