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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: LOS ANGELES, CA

Date: FEB 24 2005

IN RE:

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:

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 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 pursuant to 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

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. *Decision of the District Director*, dated June 4, 2004.

On appeal, counsel states that it will be an extreme hardship upon the applicant's United States citizen wife if the applicant is denied admission and removed. *Brief and Evidence in Support of Appeal Evidence*, dated October 15, 2004.

In support of this assertion, counsel submits a brief and copies of medical records pertaining to the condition of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on November 4, 1989, the applicant attempted to obtain admission to the United States by presenting counterfeit documentation.

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.

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 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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.

Counsel asserts that the applicant's spouse suffers from a significant medical condition that requires continued treatment and the presence of the applicant to provide care and support for her. *Brief and Evidence in Support of Appeal Evidence* at 2. The record reflects that the applicant's spouse underwent surgery for possible endometriosis on May 19, 2003. *Letter from Zoltan Katona, MD*, dated August 12, 2004. The record further reflects that the applicant's spouse underwent a second surgery, a hysterectomy, on September 1, 2004. *Letter from Zoltan Katona, MD*, dated October 13, 2004. A physician treating the applicant's spouse indicates that the recovery period for a hysterectomy is approximately six to eight weeks. *Letter from Zoltan Katona, MD*, dated August 12, 2004. He notes that the applicant's spouse is recovering well from her surgery and, at the time of his writing, was expected to return to work on November 1, 2004. *Letter from Zoltan Katona, MD*, dated October 13, 2004. While the medical condition of the applicant's spouse is regrettable, the record fails to establish that the presence of the applicant is required for his spouse to function as counsel contends. Based on the record, the applicant's spouse was expected to resume employment and her need for further treatment was to be administered on an as needed basis. *Id.* ("Any future treatments will depend on patient's state of health [after her recovery from surgery].").

The record contains a declaration of the applicant's spouse stating that she and her children need the love and support of the applicant. *Declaration of Blanca Aparico*, dated February 5, 2001. The applicant's spouse further indicates that it would be impossible for her to support her children without the applicant's income. *Id.* The record fails to substantiate the assertion of the applicant's spouse. Further, the record fails to establish that the applicant will be unable to contribute to the financial stability of his family from a location outside of the United States.

The record makes no other assertions regarding hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility to the United States. Although counsel refers to *Matter of Cervantes-Gonzalez*, the record fails to address the majority of the factors identified in that case.

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* 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. Moreover, the AAO notes 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 AAO recognizes that the applicant's spouse 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(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.