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U.S. Citizenship
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HQ MAR 15 2005

FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Applicant: [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:



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 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 pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained entry into the United States by willful misrepresentation when she entered the United States on a B2 visitor visa even though she was already living and working in this country. She also failed to reveal this information on her I-485 Adjustment of Status application. The applicant is married to a U.S. citizen, and she seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S. with her husband and child.

In a decision dated July 28, 2003 the acting district director denied the applicant's Application for Waiver of Grounds of Excludability (Form I-601), because the applicant failed to establish that her husband would experience severe hardship due to her inadmissibility. On appeal, counsel asserts that the Service (now Citizenship and Immigration Services, "CIS") failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. Counsel asserts that the applicant's husband will experience extreme hardship whether he remains in the United States or relocates to Mexico.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to § 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the BIA deemed 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.

The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

Counsel asserts that the applicant's husband will suffer extreme emotional hardship if the applicant is removed. The record contains a copy of a prescription dated August 19, 2003 for the anti-depressant Prozac, a psychological report dated August 17, 2003 from psychotherapist [REDACTED] MFT, and a letter dated October 31, 2002 from psychologist [REDACTED] Ph.D. Dr. Freitag wrote that the applicant's husband had no history of psychiatric problems, but that currently he was suffering from adjustment disorder with mixed anxiety and depressed mood. Dr. [REDACTED] indicated that the applicant's husband's symptoms would sharply increase if he were separated from his wife and son. The letter does not indicate that Dr. [REDACTED] previously provided any therapy to the applicant's husband, and it appears that Dr. [REDACTED] opinion was based on a single meeting of undetermined duration with the applicant's husband. Mr. [REDACTED] based his evaluation on a two-hour conversation with the applicant and her husband. In contrast to Dr. [REDACTED] evaluation, Mr. [REDACTED] wrote that the applicant's husband had suffered from depression during his high school years, which rendered him more prone to experience depression now. Mr. [REDACTED] expressed the opinion that, since the deaths of his uncle and prematurely born child, the applicant's husband's condition had deteriorated since his interview with Dr. [REDACTED] in October 2002. Mr. [REDACTED] diagnosed the applicant's husband with major depression, and stated that he feared more dangerous behaviors or more conscious suicidal ideation or attempts. The applicant's husband began taking the anti-depressant Prozac after his visit with Mr. [REDACTED]

Mr. [REDACTED]s assessment of the applicant's husband's psychological background was different from that of Dr. [REDACTED]. In addition, the applicant's husband experienced two deaths in the family immediately prior to his visit with Mr. [REDACTED] and these incidents appear to have contributed greatly to his diminished mood. There is no explanation in Mr. [REDACTED] letter regarding how he concluded that the applicant's husband is in danger of "more conscious suicidal ideation or attempts," in particular given the fact that Mr. [REDACTED] had no

prior therapeutic relationship with the applicant's husband. The applicant's husband began to take Prozac shortly after his visit with Mr. [REDACTED] but the prescribing physician provided no information regarding the applicant's husband's psychiatric condition. The AAO notes that depression is an unfortunate but not unusual consequence of the separation of family members due to removal; therefore the applicant's current symptoms cannot be considered extreme. Absent documentary evidence, the AAO cannot conclude that the applicant's husband is in actual danger of becoming incapacitated or unable to care for himself or others on account of the applicant's inadmissibility.

Counsel states that the applicant's husband cannot relocate to Mexico, as he does not speak Spanish, has no family ties in Mexico, and does not want to abandon his interests in his father's business. In addition, the applicant's husband feels that if he remains in the United States while the applicant departs with their child, he will suffer great emotional hardship. The choices he faces in either circumstance are difficult but are common to individuals in similar situations. The AAO acknowledges that the applicant's husband will encounter hardship on account of the applicant's inadmissibility; however, the record does not establish that the applicant's husband faces hardship beyond that which is often experienced by similarly situated individuals.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to determine whether the acting district director erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.