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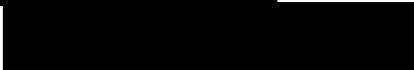
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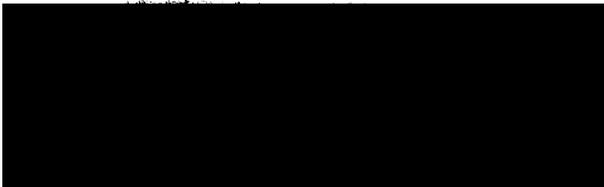
Date: NOV 07 2005

IN RE:



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.

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 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 naturalized 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 remain in the United States with her U.S. citizen 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 has presented sufficient evidence to establish extreme hardship to her spouse. Counsel asserts that denial of the waiver is a capricious abuse of discretion, that the district director based the decision on inapplicable precedent decisions, and that the district director incorrectly stated several facts.

The applicant submitted an application for permission to reapply for admission into the United States (Form I-212), which was also denied in a separate decision. Counsel includes issues on appeal pertaining to that separate application, in effect submitting a single appeal for both denials (the I-601 waiver application and the I-212). The AAO will address below the issues raised regarding the waiver denial, but not the denial of the permission to reapply for admission.

The record contains civil and religious documents, naturalization certificates, financial and tax documents, court records, statements by the applicant and her husband, and other documentation. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by attempting to obtain entry into the United States on February 15, 1993 by presenting a Form I-444 travel document belonging to her sister. Counsel points out the district director's error in stating that the applicant was convicted on February 16, 1993 of fraud and misuse of visas and permits, when in fact that particular charge against the applicant had been dropped. The applicant was convicted of illegal entry. Counsel is reminded, however, that the above ground of inadmissibility does not require any conviction, and that the district director's finding of inadmissibility is not based on the applicant's conviction, but rather on her admitted willful use of a document belonging to another person in order to gain a benefit under the Act.

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.

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).

Counsel confuses the required showing of extreme hardship with the balancing of equitable factors, in particular in attempting to distinguish the cases cited by the district director from the case at hand. For example, counsel repeatedly discounts cases from comparison because they involve more egregious behavior than that admitted by the applicant. The establishment of extreme hardship, however, does not depend on a weighing of an alien's "bad acts" against her positive factors. Extreme hardship, standing alone, is the first step in the waiver analysis, regardless of whether the applicant committed a crime involving moral turpitude or misrepresentation. Therefore, contrary to the impression counsel attempts to create, one often finds illustrative cases in the extreme hardship determination that stem from different grounds of inadmissibility.

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 would suffer extreme hardship as a result of returning to Mexico to remain with the applicant, as all of his immediate family resides in the United States. The record does not indicate, however, that the applicant's husband would suffer greater than usual hardship on this account, or that he would be unable to visit or communicate with his family members after moving to Mexico. Counsel also asserts that the applicant's spouse maintains lucrative employment in the United States and provides the financial foundation for his family. Counsel states that the applicant's husband will not be able to find employment in his current field involving the manufacture of airplane parts. The fact that the applicant's husband cannot find employment in his exact field, however, does not constitute extreme hardship, and while salaries may be lower in Mexico, so is the cost of living. The record does not establish that the applicant's spouse would be unable to find suitable employment in his native Mexico in order to meet his financial needs.

Moreover, 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 record also fails to establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment and close proximity to his family members. Counsel contends that the applicant's husband will suffer financial hardship if the applicant is denied a waiver of inadmissibility because the applicant's potential income as a teacher will never materialize if she leaves the United States. However, the record contains no evidence that the applicant's husband has been suffering extreme hardship with his current income, or that the applicant's potential earnings are required for the family to meet its needs.

The applicant's husband stated that he would suffer extreme emotional hardship if the applicant is not allowed to remain in the United States. The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements and will be faced with difficult choices as a result of the applicant's inadmissibility. The applicant's husband's concerns, however, are typical to individuals separated as a result of removal. Congress did not intend to extend waiver eligibility to every case in which a qualifying relationship exists; it must be established that the hardship caused by the inadmissibility goes beyond that which is typical.

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 section 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.