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HZ

FILE: [REDACTED] Office: LOS ANGELES

Date: **NOV 09 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: 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 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, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen in order to procure entry into the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband and children.

The district director concluded that the applicant 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 District Director*, dated October 27, 2004.

On appeal, counsel for the applicant contends that the applicant's husband and children will suffer economic and emotional hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated November 22, 2004.

The record contains a statement from counsel on Form I-290B; a brief from counsel; a statement from the applicant's husband in support of the appeal; a copy of the naturalization certificate of the applicant's husband; copies of the birth certificates for the applicant's children; a copy of the applicant's marriage certificate; statements from the applicant's children; a letter from the pastor of the applicant's church; copies of tax and financial documents for the applicant's family; copies of photographs of the applicant and her family; a statement from the applicant's husband submitted with the initial Form I-601, Application for Waiver of Ground of Excludability; evidence that the applicant's oldest son is enrolled in a school for children with special needs, and; documentation regarding the applicant's immigration history. The entire record was reviewed and considered in rendering this decision.

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

(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 (including section 274A) or any other Federal or State law is inadmissible.

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.

The record reflects that on January 27, 1985 the applicant applied for admission to the United States at San Ysidro, California by presenting a U.S. birth certificate that belonged to another individual. Thus, the applicant falsely represented herself to be a U.S. citizen for the purpose gaining admission to the United States. Accordingly, she was deemed inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act. The applicant does not contest her inadmissibility on appeal.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

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 applicant herself experiences upon deportation is irrelevant to section 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that if the applicant is prohibited from remaining in the United States her husband and children will suffer extreme hardship. *Brief in Support of Appeal*, dated November 22, 2004. Counsel states that the applicant’s husband and four children are U.S. citizens. *Id.* at 1. Counsel provides that the applicant’s husband and children are “entirely dependent on her for their emotional and financial support.” *Id.* at 2. Counsel indicates that the applicant’s family would suffer hardship if the applicant is compelled to relocate to Mexico, as she would have difficulty finding employment there that is comparable to that available in the United States. *Id.* Counsel explains that the applicant provides care for her developmentally disabled stepson, who would experience significant hardship if the applicant departs the United States. *Id.* at 1-2. Counsel asserts that the applicant herself will experience hardship if she returns to Mexico, and such hardship to a crucial family member represents hardship to the entire family including the applicant’s husband and children. *Id.* at 2.

The applicant’s husband explains that he will experience significant emotional hardship if he is separated from the applicant. *Statement from Applicant’s Husband in Support of Appeal*, dated November 17, 2004. He notes that he and the applicant have been married for many years, since 1986, and that he and their children depend on the applicant for emotional support and daily care. *Id.* at 1-2. The applicant’s husband states that he believes their children should be raised by both parents, and that they will be deprived of this benefit if the applicant departs the United States. *Id.* at 2-3. The applicant’s husband provided that the applicant wholly depends on him for financial support, as she has not worked since they were married. *Statement from Applicant’s Husband in Support of Form I-601* at 1. The applicant’s husband stated that he would be compelled to care for their four children alone in the applicant’s absence, which would be difficult as he must work to support the family. *Id.* at 2.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is compelled to depart the United States. The applicant’s husband expresses that separation from the applicant will be difficult for him and their children. The AAO acknowledges that the applicant’s husband has spent many years maintaining a household with the applicant, and that the applicant provides emotional support for him as well as domestic tasks. However, the applicant has not shown that her husband will suffer unusual emotional consequences due to separation that go beyond those commonly experienced by family members of those deemed excludable or inadmissible. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

It is further noted that the applicant's husband may relocate out of the United States with the applicant. As a native of El Salvador, it is presumed that the applicant's husband speaks Spanish and is familiar with the culture of Central America. Should he relocate to Mexico with the applicant, he would not face the difficulties associated with learning a new language. Yet, as a citizen of the United States, the applicant's husband is not required to reside outside of the United States if the applicant's waiver application is denied.

Counsel states that hardship to the applicant is effectively hardship to her family. Thus, counsel suggests that the applicant's husband endures additional hardship by sharing in consequences to the applicant. The AAO recognizes that the applicant's entire family shares in the applicant's hardship, and that the applicant's reaction to her immigration difficulties has an emotional impact on her husband. Yet, such sharing of emotional consequences is common to family members separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The applicant has not shown that this additional burden to her husband raises his level of hardship to extreme hardship.

Counsel provides that the applicant's husband is "entirely dependent on her for their emotional and financial support." *Brief in Support of Appeal* at 2. However, the record reflects that the applicant has not worked since she was married in 1986, and that the applicant's husband is the sole income earner in the family. Thus, the applicant's husband is not dependent on the applicant for economic contribution. It is noted that the applicant and her husband have four children, one who is age 20, one who is age 17, and two who are age 11. The applicant has provided child care for the family. The applicant's husband may be required to secure childcare for their two 11-year-old children in the applicant's absence. However, the record suggests that the applicant's husband earns significant income to meet this and his other financial needs in the applicant's absence. *See Applicant's Husband's 2003 IRS Form 1040, U.S. Individual Income Tax Return.*

Counsel stated that the applicant's U.S. citizen children will experience hardship if the applicant is compelled to depart the United States. The applicant's husband expressed that the applicant herself would be deprived of employment opportunities if her waiver request is denied. The AAO acknowledges that the applicant's inadmissibility has significant consequences for her children, as she has served as their primary caretaker. The AAO further acknowledges that the applicant may have fewer and less lucrative employment options in Mexico. However, hardship experienced by the applicant or the applicant's children is not probative of the applicant's eligibility for a waiver under section 212(i) of the Act. Section 212(i)(1) of the Act.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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)(9)(B) 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.