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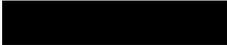


**U.S. Citizenship
and Immigration
Services**

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HR

FILE: 

Office: SANTA ANA, CA

Date: NOV 18 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.

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 lawful permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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 her 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 March 3, 2004.

On appeal, counsel states that Citizenship and Immigration Services failed to consider the extreme difficulties the applicant's husband will encounter in the absence of the applicant to include cooking for the family and performing chores. Counsel further contends that the absence of the applicant would impose a financial burden on her spouse. *Form I-290B*, dated March 31, 2004. In support of these assertions, counsel submits a declaration of the applicant's spouse, dated April 23, 2004, a copy of a death certificate with English translation for the applicant's sister in law and a declaration of the applicant, dated April 23, 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on September 15, 1996, the applicant attempted to procure admission to the United States by presenting an I-551 Resident Alien Card lawfully issued to another person.

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 herself 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.

The AAO notes that the record fails to make any assertion of hardship based on the factors identified in *Matter of Cervantes-Gonzalez*.

The record fails to establish extreme hardship to the applicant's spouse if he remains in the United States in the absence of the applicant. The applicant's spouse asserts that it would impose hardship on him if he needed to provide care for his children in the absence of the applicant. The applicant's spouse states that he works different schedules each week and sometimes works six days per week. *Declaration of Rigoberto Hernandez Cuevas*, dated April 23, 2004. The applicant's spouse claims that the costs of a baby sitter would impose financial hardship on him in light of his need to provide for his family and send money to the applicant in Mexico if she departs from the United States. *Id.* While the additional financial burdens confronted by the applicant's spouse as a result of the inadmissibility of the applicant are regrettable, these concerns and costs are typical to individuals separated as a result of inadmissibility and do not constitute extreme hardship imposed on the applicant's spouse. Moreover, the record fails to establish that the applicant will be unable to contribute to her own financial maintenance from a location outside of the United States.

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 would endure hardship as a result of separation from the applicant. However, his

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.

The AAO acknowledges the assertions of the applicant regarding the reasons for her departure from the United States during 1996. *Letter from Antonia Hernandez*, dated April 23, 2004 (stating that her sister-in-law was ill with cancer and that she wanted to be with her family during that difficult time). The AAO notes that the act giving rise to the applicant's inadmissibility is not her departure from the United States, but her fraudulent misrepresentation to immigration officials when attempting to gain admission to the United States upon her return.

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(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.