



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN FRANCISCO, CA

Date:

SEP 23 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, 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 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 procured 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 her spouse and child.

The acting 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 Acting District Director*, dated June 20, 2003.

On appeal, counsel indicates that the decision of the director errs in stating that the applicant used her tourist visa on numerous occasions while residing in the United States. Further, counsel states that Citizenship and Immigration Services did not consider all of the factors contributing to the claim of extreme hardship by the applicant's spouse. *Form I-290B*, dated June 28, 2003.

In support of this assertion, counsel submits a brief, dated July 25, 2003; a declaration of the applicant; a declaration of the applicant's spouse; copies of passport pages from a Mexican passport issued to the applicant; a letter from a priest in Mexico with English translation; a letter from the employer of the applicant's spouse and copies of medical records for the applicant's child. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, during July 1997, the applicant obtained admission to the United States by presenting a tourist visa when she intended to reside in the United States on a permanent basis.

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.

Counsel asserts that the applicant's spouse will suffer hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel states that the son of the applicant's spouse is applying to relocate to the United States from El Salvador. *Brief in Support of AAU Appeal of the Denial of I-601 Waiver for* [REDACTED] [REDACTED] dated July 25, 2003. The applicant's spouse contends that if the applicant departs from the United States he will be faced with choosing to live with his son in the United States or his wife and daughter in Mexico. *Declaration of Orlando Rodenzo*, dated July 24, 2003. Further, the applicant's spouse asserts that if he relocates to Mexico he will lose the medical insurance he maintains through his employment. *Id.* Counsel contends that the applicant's daughter is prone to infections and requires adequate medical attention to remain healthy. *Brief in Support of AAU Appeal of the Denial of I-601 Waiver for* [REDACTED]

The record fails to establish that the applicant's spouse will suffer extreme hardship if he remains in the United States in order to maintain his employment, access to adequate medical care for his daughter and residence with his son. Counsel contends that the applicant's spouse would suffer hardship as a result of separation from the applicant. Counsel submits the declaration of the applicant's spouse to support the proposition that the applicant's spouse loves his family and feels depressed as a result of the applicant's inadmissibility. See *Declaration of* [REDACTED]. The applicant's spouse states that he is preoccupied at work and counsel submits a letter from the production manager supervising the applicant's spouse stating that although the applicant's spouse is normally an outstanding worker, he has become depressed and quiet at work. The manager notes that the applicant's spouse has made mistakes including breaking a light which cost almost \$1000.00 to replace. *Letter from* [REDACTED] dated July 18, 2003. While the situation confronting the applicant's spouse is regrettable, the AAO notes that the record does not reflect that the applicant's spouse has sought medical care or consultation with a mental health professional as a result of his depressed mood. In the absence of substantiating documentation, the assertions of the applicant's spouse and counsel do not

form the basis for a finding of extreme emotional hardship. Further, the record fails to establish that the applicant's spouse will be unable to successfully maintain employment in the absence of the applicant.

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, 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.

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.