



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date: APR 27 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Los Angeles, California, denied the waiver application. The matter 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 to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. He is seeking a waiver of inadmissibility so that he may live in the United States with his U.S. citizen wife.

The district director denied the application for waiver, finding that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required by INA § 212(i), 8 U.S.C. § 1182. *Decision of District Director* (September 24, 2004).

On appeal, counsel contends that the applicant's wife would suffer extreme hardship if she remained in the United States because she would be separated from her husband and the father of her child. Further, counsel contends that the applicant's wife, who was born in Nicaragua and has no ties to Mexico other than her husband, would suffer extreme hardship if she joined her husband in Mexico. *Brief in Support of Appeal*, October 22, 2004.

The entire record has been reviewed and considered in making this decision.

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)(1) of the Act provides:

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should favorably exercise his discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, in order for the applicant to qualify for a section 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include

hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen children will therefore not be considered in this decision.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) identified those factors relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the applicant's wife is a naturalized citizen of the United States who is from Nicaragua. She has no ties to Mexico and few to Nicaragua. Mexico is poor, Nicaragua is poorer, Mexico has political unrest, Nicaragua has more political unrest. The applicant's wife has lived in the United States for thirty years and her family and community ties to this country are extensive. While the record indicates that the applicant's wife would face hardship if she were required to leave the United States because of the applicant's removal, as a U.S. citizen there is no requirement that she leave the country. If she remains in the United States, she would face raising her child and caring for her family without the applicant's assistance, not having the emotional support and love of her husband, and the loss of any economic support that her husband provides.

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. The applicant must therefore show that the emotional and financial loss that his wife would suffer if he were removed would be extreme or out of the ordinary as compared to other families in similar situations.

The financial support that the applicant has provided must be balanced by the fact that he was unemployed as of October 13, 2004. See, *Psychological Evaluation*, [REDACTED] Ph.D. Licensed Psychologist, October 13, 2004. The applicant's wife earned over \$36,000.00 in 2001 as evidenced by the

copy of her federal income tax return Form 1040 in the record. The loss of the applicant's potential income would have a negative impact, but given the ability of the applicant's wife to support herself and her family, as well as the applicant's employment history, the record does not demonstrate that the financial impact would be extreme. The applicant's wife is being treated for depression. She depends on her husband to help care for their four year-old son. He also helps with her 75 year-old mother, who is in poor health, and provides guidance to her nineteen year old son from a previous marriage. *Declaration of Maria Morales*, October 21, 2004. The applicant's wife has been diagnosed as being in the "severe range" of both depression and anxiety. *Psychological Evaluation*, pp.5-6. She is on medication. *Id.*, p. 8. The psychologist reported that in her opinion, the applicant's wife would develop a full "Major Depressive Disorder," that would lead to "disturbances in sleep and appetite, impairments in attention and concentration, increasing withdrawals and isolation and generalized feelings of hopelessness. *Id.*

The AAO does not question the findings of the psychologist that the applicant's current immigration situation contributes to his wife's condition or that the condition will be exacerbated if he is removed. However, the applicant's wife is receiving treatment. There is no information that the condition is either life threatening or completely disabling. There also is no indication that the applicant's wife would not suffer from depression if her husband were granted resident status. Regardless of what happens in the future, her recovery or non-recovery from depression is not simply dependent upon whether her husband remains with her in the United States. While not minimizing the difficulties that the applicant's wife would endure if the applicant were removed, there has been no showing that her situation is unusual or different in any significant degree from the situation that any spouse would face if the other spouse were removed.

A review of the record 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.

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. 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.