



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



H2

FILE: [REDACTED]

Office: LOS ANGELES

Date: AUG 08 2006

IN RE: [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: Self-represented

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and father of three U.S. citizen children. He 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 his 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 21, 2004.

The record reflects that, on April 4, 1998, at the San Ysidro, California, Port of Entry, the applicant applied for admission into the United States. The applicant presented an I-551 Lawful Permanent Resident Card that belonged to another, under the name [REDACTED]. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud. However, the applicant was allowed to withdraw his application for admission and was returned to Mexico on April 5, 1998. The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date in April 1998.

On May 24, 2001, the applicant's spouse became a naturalized U.S. citizen. On June 22, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On May 23, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office. On December 19, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that his spouse would suffer extreme hardship if he were refused admission to the United States. *See Applicant's Spouses Letter*, dated January 11, 2005. In support of his contentions, the applicant submitted a letter from the applicant's spouse, family photographs, a photocopy of the U.S. birth certificate for the applicant's most recently born child, a photocopy of the applicant's 2003 Tax Return and a bill of sale for a new house. The entire record was reviewed in rendering a decision in this case.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

The district director based the applicant's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's testimony and withdrawal of application for admission documentation contained in the record. The applicant does not contest the district director's finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect their mother, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record reflects that, on April 10, 1996, the applicant [REDACTED] is a native of Mexico who became a lawful permanent resident of the United States in 1993 and a naturalized U.S. citizen in 2001. The applicant and [REDACTED] 9-year-old son, a 5-year-old son and a 3-year old son who are all U.S. citizens by birth. The record reflects further that the applicant and [REDACTED] are in their 30's, and there is no indication that Ms. [REDACTED] the children have any health concerns.

The applicant and [REDACTED] would suffer extreme hardship should she remain in the United States without the applicant because the applicant is currently the only source of income for the family and she would be unable to work, care for the children and be able to pay for the house that they recently purchased. [REDACTED] states that she would suffer extreme hardship because her separation from the applicant would mark tremendous chaos, a losing of emotional equilibrium and cause her children to lose their learning abilities, self-esteem and confidence.

Financial records indicate that [REDACTED] was employed from 1993 until at least 2001. In 2001, [REDACTED] contributed approximately \$13,403 to household income. [REDACTED] employment letter indicates that she earned this income through employment that was not year-round. There is no evidence in the record to suggest that [REDACTED] would be unable to obtain full-time year-round employment that would be sufficient to support her family. The record reflects that [REDACTED] family members, such as her parents and siblings, who may be able to support her financially in the absence of the applicant. The record reflects that [REDACTED] and her children have resided with her parents in the past, which would ease [REDACTED] financial burdens. There is no evidence in the record to suggest that [REDACTED] would be unable to earn sufficient income to support herself and her children without the income provided by the applicant. While it is unfortunate that [REDACTED] have to lower her standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

The applicant and [REDACTED] do not assert, and there is no evidence in the record to suggest, that [REDACTED] or her children suffer from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] would essentially become a single parent, professional childcare may be an added expense and not equate to the care of a parent, and her children would be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that [REDACTED] has worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and [REDACTED] absent from the home due to work commitments. Finally, according to the record, [REDACTED] family members in the immediate vicinity to support her emotionally and physically in the absence of the applicant.

The applicant and [REDACTED] do not assert that [REDACTED] would suffer extreme hardship if she accompanied the applicant to Mexico. The AAO is, therefore, unable to find that [REDACTED]

██████████ would experience hardship should she choose to join the applicant in Mexico. Additionally, the AAO notes that, as citizens of the United States, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. ██████████ would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that ██████████ will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States: In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.