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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

*hr*

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FILE:



Office: LOS ANGELES, CA

Date: **AUG 22 2006**

IN RE:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, CA, 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 (U.S.) under 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 into the United States by fraud or willful misrepresentation on August 16, 1995. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the applicant's spouse's affidavit and the evidence in the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 30, 2004.

On appeal, counsel asserts that the District Director erred in only considering the applicant's spouse's declaration and not the entire record of evidence; the District Director erred in not using the interpretation of extreme hardship as stated in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); and that the Federal Court cases cited by the director are not binding on the applicant's case because her application arises in the Ninth Circuit's jurisdiction. *Form I-290B*, dated December 27, 2004.

The AAO finds that although the cases cited by the District Director are not binding on the applicant's case, it is common legal practice to use decisions from other jurisdictions as persuasive jurisprudence. The AAO notes that this decision cites cases from the Ninth Circuit, which are not contradictory to the cases cited by the District Director. The AAO also notes that *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) is the most current Board of Immigration Appeals decision regarding the definition of extreme hardship and as such is the ruling authority on the matter. The AAO will use this case as precedent in rendering a decision on the applicant's waiver application.

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

- (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 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 indicates that on August 16, 1995 the applicant presented a valid I-586 Form under the name of Anita Lopez in an attempt to gain entry into the United States. After being sent to secondary inspection, the applicant admitted the form did not belong to her and then gave a false name of Cristina Zalas Jimenez. 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. Hardship the alien herself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

*Matter of Cervantes-Gonzalez* provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The applicant states that her spouse cannot relocate to Mexico because they have no family living in Mexico and the economic conditions are poor. The AAO notes that the applicant submitted no documentation to establish the economic conditions in Mexico or the applicant's spouse's ability to support himself in Mexico. The applicant must submit documentation to support her claims. In the current application she has not done so, therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant states that her spouse would suffer emotional and financial hardship as a result of their separation. She states that she takes care of the children while her husband is at work and that if she were to be removed to Mexico her spouse would not be able to afford childcare. The AAO notes that the applicant's parents are lawful permanent residents and reside in the United States. The applicant submitted no evidence to show that her parents would not be able to help with childcare in her absence. In addition, the applicant submitted no documentation to show the extent of her spouse's emotional suffering and that this emotional suffering goes beyond what would normally be expected upon removal of a family member. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record does not show that the hardship experienced by the applicant's spouse is beyond what would normally be expected upon removal of a family member.

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.

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(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.