

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

H2

PUBLIC COPY



FILE:



Office: LOS ANGELES, CA

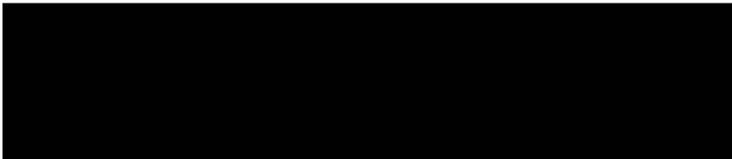
Date: JUL 07 2006

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.

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 January 16, 1997. The applicant 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 U.S. citizen spouse and child.

The district director concluded that the assertions provided in affidavits and the evidence in the record when considered in its totality does not support a finding of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated November 24, 2004.

On appeal, counsel states that the director failed to consider the positive factors in the applicant's case and erred in his determination of extreme hardship. *Form I-290B*, dated December 21, 2004.

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 January 16, 1997 the applicant presented a temporary permanent resident card (Form I-551) in the name of [REDACTED] in an attempt to gain entry into the United States. A 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 to a qualifying family member. Hardship the alien herself experiences or her child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's family. 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 they reside in Mexico or in the event that they reside in the United States, as they are 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. In his brief, counsel states that the applicant's spouse cannot move to Mexico because he would lose his health insurance for both himself and his son and would not be able to find employment. *Counsel's Brief*, dated January 21, 2005. In support of these assertions counsel submitted proof of the spouse's health insurance through his employer and various newspaper articles regarding the low employment rates and poor health care in Mexico. In addition, the applicant's spouse has been living in the United States for the past 20 years and his entire family resides in the United States. They have no support network in Mexico. Thus, the applicant has established that her spouse would suffer extreme hardship as a result of relocating to Mexico because he would not be able to find employment, he nor his son would have access to adequate health care, and relocating to Mexico would mean separation from his entire family in the United States.

However, the applicant has not established that her spouse would suffer extreme hardship as result of being separated from the applicant. Counsel states that the applicant's spouse will suffer emotionally if his wife is removed from the United States. He states that the family has grown extremely close since the applicant's long battle with cervical cancer. The AAO finds that there is no documentation establishing the extent of the spouse's emotional suffering. In addition, counsel states that the applicant's spouse will suffer financially as a result of the applicant's inadmissibility. The applicant submitted financial documentation showing that in 2002 her spouse made \$45,000. The applicant also submitted mortgage and property tax statements. The AAO notes that the applicant submitted no evidence to show that the spouse's family in the United States could not help him with the added expense of the applicant's removal. 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 removal and does not rise to the level of extreme hardship.

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.