



U.S. Citizenship  
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FILE:

Office: SAN FRANCISCO, CALIFORNIA

Date: JUL 21 2006

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(i) of the  
Immigration and Nationality Act (INA), 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, 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 is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be inadmissible to the United States pursuant to § 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. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, the applicant contends that Citizenship and Immigration Services (CIS) failed to thoroughly analyze the facts and evidence in the case and misapplied the law regarding extreme hardship. Specifically, the applicant asserts that CIS failed to give due weight to the impact his inadmissibility would have on his wife's medical condition. The applicant submits a letter dated May 20, 2004 written by his wife's chiropractor [REDACTED]. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's use of a Mexican passport with a fraudulent U.S. visa in an attempt to procure admission into the United States in 1997.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. In the present case, in order for the applicant to qualify for a § 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 child will therefore be considered in this analysis only insofar as it affects the hardship experienced by his spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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, 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 § 212(i) of the Act. These factors include, with respect to the qualifying relative, 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.

*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).

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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). *Perez v. INS*, *supra*, defined "extreme hardship" as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship),

that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record contains medical evaluations from 2002 submitted with the application for the waiver. The 2002 reports indicate that the applicant suffered from back pain due to a congenital deformity that caused scoliosis. The applicant was advised to perform back strengthening exercises and take anti-inflammatory medication. According to the evidence on the record, the applicant was employed part time, and there was no indication that she was disabled or incapacitated. On appeal, the applicant submits a letter written by his wife's chiropractor, dated May 20, 2004. Dr. [REDACTED] does not state how long he had treated the applicant's wife prior to his evaluation, or what her prognosis was at that time. Dr. [REDACTED] does not indicate the nature or extent of the medical treatment that the applicant's wife requires. Dr. [REDACTED] writes that repeated bending, lifting, and stooping increase the applicant's wife's pain, and she is unable to work. This observation regarding her disability is not supported by any other evidence in the record. The record does not contain sufficient evidence regarding the applicant's wife's medical condition and claimed incapacitation; thus, the AAO cannot conclude that she is unable to work or carry out her daily activities.

The applicant contends that his wife would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant, because they both would be unable to find employment in that country, and they would therefore be forced to live in poverty. The applicant points out that his wife would not be able to obtain medical assistance in Mexico, due to their expected lack of finances in Mexico. The record contains country conditions information about Mexico that discusses the weaknesses in the Mexican economy. The record, however, does not establish the type of employment opportunities available to the applicant and his spouse in Mexico, and the AAO is unable to conclude that they would necessarily be unemployed there. The AAO notes that a change in employment and/or economic status often accompanies a relocation abroad as a result of removal and does not constitute extreme hardship.

The record includes a statement by the applicant's wife, who wrote that if the applicant were removed, her salary alone would be insufficient to cover her household expenses. The record, however, does not establish that she would be unable to make any necessary changes or adjustments to accommodate the new situation. Also, it has not been established that the applicant would be unable to contribute to the family's finances from a location outside the United States.

In addition, the applicant's wife wrote that she suffers from chronic pain, and she needs the applicant to take care of their child and home. The record does not include evidence that the applicant's wife is unable to care for her child or herself. Also, there is no documentation establishing that the applicant's wife would suffer greater than usual emotional distress if the applicant were removed. The AAO does not disregard or take lightly the applicant's wife's concerns regarding the choices and changes she may face due to the applicant's inadmissibility; however, her experience is not demonstrably more negative than that of other spouses separated as a result of removal.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater

hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United States.

In proceedings for application for waiver of grounds of inadmissibility under § 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.