



U.S. Citizenship
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Services

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FILE:

Office: SAN FRANCISCO, CA

Date: JUN 06 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) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 and application for permission to reapply for admission after removal were denied by the District Director, San Francisco, CA, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to procure admission into the United States on October 16, 1995 by presenting a U.S. birth certificate that did not belong to her. The applicant was found to be inadmissible to the United States 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. She was ordered excluded and deported on the same day. The applicant then re-entered the United States sometime before December 3, 1995, the date she was married in Alameda, CA. The applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She now seeks permission to reapply for admission (Form I-212) into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). She also seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her husband and children.

The district director determined that the applicant did not establish that her U.S. citizen spouse and children would suffer extreme hardship as a result of the applicant's inadmissibility. The waiver application was denied accordingly. *District Director's Form I-601 Decision*, dated May 6, 2004. The director also determined that the unfavorable factors outweighed the favorable factors in the applicant's case. The application for permission to reapply for admission was denied accordingly. *District Form I-212 Decision*, dated May 6, 2004.

On appeal, counsel asserts that the district director erred in denying the applicant's Form I-212 and Form I-601 because the applicant established that her U.S citizen spouse and children would suffer extreme hardship as a result of her inadmissibility. *Form I-290B*, dated May 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.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The AAO notes that the applicant's eligibility for a waiver application will be adjudicated first because if she is denied the waiver, no purpose would be served in adjudicating her application for permission to reapply for admission.

The record indicates that on October 16, 1995 the applicant presented a U.S. birth certificate that did not belong to her in an attempt to gain entry into the United States. 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(a)(9)(B)(v) 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.

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's spouse states that he works in construction, making \$24.67 an hour. He is a member of a trade union and through the union receives free health care coverage for his family. He states that relocating his family to Mexico would cause extreme hardship because of the poverty, unemployment, inadequate education and lack of access to health care. He states that he could not bring his

daughter to Mexico because she would not be able to obtain adequate health care for her extreme asthma attacks. He would also lose all of his retirement benefits if he relocated to Mexico. In support of the assertions regarding country conditions in Mexico, counsel submitted 14 country condition reports. The AAO finds that because of the applicant's spouse's loss of health coverage, employment and retirement benefits coupled with the country conditions in Mexico, he would suffer extreme hardship as a result of relocating.

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's spouse states that the applicant provides childcare for their children from 5:00am to 8:00pm while he is at work. The applicant's spouse states that if the applicant is removed from the United States he will have to leave his job in order to provide childcare for his children. In addition, the applicant states that he will not be able to support his family in the United States and his wife in Mexico. The AAO notes that the applicant's spouse submitted a letter from his employer, [REDACTED] Inc., which states that he works 40 hours a week for \$24.67 an hour. At this wage the applicant's spouse is earning approximately \$51,000 a year. The applicant submitted no documentation to support the assertion that he would not be able to provide childcare for his children on this salary. There is no evidence in the record that the applicant's spouse's family would not be able to help with the care of his children. And the record does not establish that the applicant's family in Mexico cannot help support the applicant upon her return. Furthermore, the applicant's spouse states that his daughter suffers from severe asthma attacks, but does not provide any medical record to establish this condition. In addition, the applicant does not establish that their daughter requires constant medical care or that the daughter's separation from the applicant would somehow cause hardship to the applicant's spouse. 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 exclusion 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.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Because the applicant is inadmissible under section 212(a)(6)(C) of the Act and does not qualify for a waiver of this ground of inadmissibility, no purpose would be served in granting her application for permission to reapply for admission. Thus, her application for permission to reapply for admission is denied.

In proceedings for application for waiver of grounds of inadmissibility and application for permission to reapply for admission, 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.