



U.S. Citizenship
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FILE:

Office: LOS ANGELES

Date: JUN 07 2006

IN RE:

[Redacted]

PETITION: 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 PETITIONER:

[Redacted]

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 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. 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.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 15, 2004.

The record reflects that, on December 31, 1995, 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 AAO notes that the lawful permanent resident card in the record matches the applicant's now naturalized U.S. citizen brother. 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. The applicant failed to provide his true name and date of birth. Consequently, on January 6, 1996, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name "[REDACTED]". 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, but prior to October 10, 1998, the date on which he married his spouse, [REDACTED], in Los Angeles, California.

On March 21, 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. Simultaneously, 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, counsel contends that the district director erred in not considering the cumulative effects of the different hardships the applicant's spouse would suffer in determining whether the applicant had established that a qualifying family member would suffer extreme hardship. *See Form I-290B*, dated October 15, 2004. In support of her contentions, counsel submitted a brief, an affidavit from the applicant's spouse, recommendation letters from the applicant's family members, family photographs and copies of documents previously submitted. 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.

The district director did not indicate on what she based the applicant's finding of inadmissibility or under what section of the Act she found the applicant to be inadmissible. The AAO finds that the only section under which the record reflects that applicant is inadmissible is section 212(a)(6)(C) of the Act. The AAO's finding of inadmissibility under section 212(a)(6)(C) of the Act is based on the applicant's admitted attempt to procure admission into the United States by presenting a lawful permanent resident card belonging to another in 1995. Counsel does not contest the district director's determination of inadmissibility. The AAO finds that both the district director and counsel erred in referring to section 212(h) of the Act, 8 U.S.C. § 1182(h) as the basis for the applicant's application for a waiver. Section 212(h) of the Act may only be used to apply for a waiver of grounds of inadmissibility under section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2). The AAO finds that the applicant is not inadmissible pursuant to section 212(a)(2) of the Act. The applicant is only inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (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.

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 son and daughter 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, Ms. [REDACTED] is a native of Mexico who became a lawful permanent resident of the United States in 1994 and a naturalized U.S. citizen in 2000. The applicant and Ms. [REDACTED] have a seven-year-old son and a three-year-old daughter who are both U.S. citizens by birth. The record reflects further that the applicant is in his 30's, Ms. [REDACTED] is in her 20's, and Ms. [REDACTED] and the children do not have any health concerns.

Counsel asserts that Ms. [REDACTED] would suffer emotional and financial hardship if she were to remain in the United States without the applicant. Ms. [REDACTED], in her affidavits, states "I need [the applicant's] physical presence in the United States for moral and economic support . . . my husband and I currently maintain the household needs . . . without his presence it would be a very difficult responsibility for me to accomplish . . . the emotional and psychological impact if he is forced to depart the United States . . . would be an extreme hardship on me. . . the thought that my husband could not adjust his status to remain in the United States legally has and will effect me greatly . . . currently my children and I are very sad and depressed . . . I am very concerned that my family will be torn apart . . . it would be very difficult to lose my husband because of the support that he provides . . . my husband is very supportive towards the children. I am very concerned that they will loose (sic) their father . . . that they will become very sad, depressed and possibly not want to eat . . . I want us to provide them with a good education . . . I would not be able to do it alone. Being unable to provide the basic necessities for my children will cause me and [sic] extreme hardship . . . it will be very difficult for me to maintain the entire home by myself . . . my husband is the primary income earner . . . I could not adequately provide for the children . . . I would feel terrible not being able to care for my children . . . I would loose (sic) my husband and my children because I would hardly see them during the day."

Financial records indicate that, in 2001, Ms. [REDACTED] contributed about 41% or approximately \$16,594 to the household income, and in 2002, Ms. [REDACTED] salary, not including overtime, was approximately \$17,888. The record reflects that Ms. [REDACTED] has family members, such as her father and mother, who may be able to support her financially in the absence of the applicant. The record shows that, even without assistance from family members, Ms. [REDACTED] earns sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The record does not support a finding of financial loss that would result in an extreme hardship to her if she had to support herself and the children without the additional income provided by the applicant, approximately \$23,711. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent and professional childcare may be an

added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that, since 1998, Ms. [REDACTED] has worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and Ms. [REDACTED] are absent from the home due to work commitments. Counsel and Ms. [REDACTED] do not assert, and there is no evidence in the record to suggest, that Ms. [REDACTED] or her children suffer from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, Ms. [REDACTED] has family members in the immediate vicinity to support her emotionally in the absence of the applicant.

Counsel contends that Ms. [REDACTED] would suffer extreme hardship if she were to return to Mexico with the applicant. However, Counsel then asserts that Ms. [REDACTED] and the children would not accompany the applicant to Mexico. Moreover, in her affidavits, Ms. [REDACTED] does not indicate that she would return to Mexico with the applicant or that she would suffer hardship if she returned to Mexico with the applicant. Counsel submits no documentation to support his assertion that the applicant's spouse would experience extreme hardship if she relocated to Mexico. The statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). The AAO is, therefore, unable to find that Ms. [REDACTED] would experience hardship should she choose to join her husband 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.

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 Ms. [REDACTED] 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.