



U.S. Citizenship
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[REDACTED]

HE

FILE: [REDACTED] Office: LOS ANGELES Date: MAY 10 2006

IN RE: [REDACTED]

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:

[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application. The matter 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 benefits under the Act by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She 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 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 November 2, 2004.

The record indicates that, on her 1989 Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant indicated she was eligible for Registry, under which an applicant must have entered the United States prior to January 1, 1972, indicating she had entered the United States on August 27, 1971. The applicant also submitted fraudulent documentation with the Form I-485 to prove that she had resided in the United States since before January 1, 1972. The applicant's Form I-485 was denied after the documents were found to be fraudulent.

On December 17, 2003, the applicant filed a second Form I-485, based on an approved I-130 Petition for Alien Relative (Form I-130), filed by her U.S. citizen spouse, [REDACTED]. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on September 22, 2004. The applicant testified that she had filed the fraudulent Form I-485 and documentation in 1989.

On October 28, 2004, the applicant filed the Form I-601 with no documentation to support her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erred in finding the applicant's spouse would not suffer extreme hardship. *See Form I-290B*, dated December 2, 2004. In support of the appeal, counsel submitted the Form I-290B, affidavits from the applicant's spouse and children, employment letters for the applicant and letters of recommendation for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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

....

- (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.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted attempt to procure benefits under the Act by fraud or willful misrepresentation of a material fact in 1989. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself 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 sons will not be considered in this decision.

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, on May 23, 1994, the applicant married [REDACTED] who is a native of Mexico and has been a lawful permanent resident of the United States since 1990. The applicant and her spouse have a 15-year-old son and a 12-year-old son who are both U.S. citizens by birth. The record reflects further that the applicant and [REDACTED] are in their 40's, and [REDACTED] and the children do not have any health concerns.

Counsel asserts that [REDACTED] would suffer extreme hardship if the applicant were not granted a waiver [REDACTED] in his affidavit, states he would have emotional and financial hardships if he were to remain in the United States without the applicant because he has two sons, who have been raised by the applicant, and for whom he does not know how to care, and that if he was required to take care of the children's domestic needs he would not earn as much money as he does now. Financial records indicate that the applicant has worked outside the home since 1997. Between 2001 and 2003 [REDACTED] earned an average of \$24,213 per year and is currently employed in a position in which he earns approximately \$27,040 per year (based on a pay rate of \$13 per hour for a 40 hour work week). There are no financial records to indicate how much the applicant earns, however, the record shows that, even without assistance from the applicant [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *2006 Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/06poverty.shtml>. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be expensive and not equate to the care of a mother, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that, since 1997, the applicant has worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and [REDACTED] are absent from the home due to work commitments. [REDACTED] in his affidavit, states "my entire life would be turned upside down if I lost my wife . . . our whole family unit would break down." Counsel does not assert, and there is no evidence in the record to suggest, that [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel does not assert and the record contains no evidence to suggest that the applicant would accompany his wife to Mexico. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should he choose to join his wife in Mexico. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is 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 [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 her 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 she 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.