



U.S. Citizenship
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FILE: [REDACTED]

Office: SAN FRANCISCO (SACRAMENTO)

Date: MAY 12 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, San Francisco, California and was rejected as untimely filed by the Administrative Appeals Office (AAO) on appeal. The appeal is reopened sua sponte by the AAO based on new evidence of timely filing. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found by a consular officer 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 having attempted to procure a visa for admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 February 24, 2004.

On appeal, counsel asserts that the application does demonstrate extreme hardship. Counsel contends that the applicant provides care to the sister of the applicant's spouse and that the applicant's spouse is presently taking contractor examinations in order to establish a landscaping business. *Form I-290B*, dated March 30, 2004. In support of these assertions, counsel submits a letter from a physician, dated March 3, 2004 and copies of documents relating to the contractor examinations taken by the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on August 25, 2000, the applicant attempted to obtain a visa for admission to the United States by presenting fraudulent documents to a consular officer.

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.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

The applicant's spouse contends that hardship would be imposed on him if he relocated to Mexico in order to remain with the applicant. The applicant's spouse states that he has lived in the United since June 1982 and that relocation to Mexico would be "a culture shock" as he has become accustomed to middle class living. He asserts that he would likely be unable to find a job in Mexico and that wages are low in the applicant's native country. The applicant's spouse indicates that he owns a home in the United States and would be forced to sell it if he moved to Mexico. *Affidavit of [REDACTED]*, dated July 10, 2003. Counsel contends that the applicant's spouse is in the process of opening his own landscaping business and would have to give up on this endeavor if he relocated to Mexico. *Form I-290B*. Counsel contends that the applicant's spouse has lived in the United States "much longer than the average spouse of a Mexican." The AAO notes that the record fails to substantiate counsel's assertion regarding the average length of residence in the United States by the spouse of a Mexican national. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the record fails to demonstrate that extreme hardship would be imposed on the applicant's spouse if he remained in the United States in the absence of the applicant in order to maintain the style of living to which he has become accustomed, ownership of his home and development of a landscaping business. Counsel asserts that the applicant and her spouse "have lived together for 13 years, much longer than the normal couple in this situation" and therefore more emotional hardship would be imposed on them by separation than would be on "most couples." *Form I-290B*. Again, the AAO notes that the record fails to offer any documentation substantiating counsel's claim. Moreover, counsel's definition of "situation" as it pertains to couples "in this situation" is unclear and imprecise. In the absence of substantiating documentation, the AAO finds counsel's assertions unpersuasive and speculative.

Counsel indicates that the applicant provides care for the sister of the applicant's spouse who suffers from renal disease and is kept alive with hemo dialysis. *Id.* See also Letter from [REDACTED] dated March 3, 2004. Counsel contends that if the applicant cannot provide care for the sister of the applicant's spouse, the situation will indirectly impose hardship on the applicant's spouse. *Form I-290B*. While the AAO acknowledges that the situation confronted by the sister of the applicant's spouse is unfortunate, the record fails to establish that the applicant is the only person able to provide care to the sister of the applicant's spouse. Moreover, the submitted physician letter indicates that the applicant provides care only "when acute problems arise" and fails to identify the frequency with which this situation occurs. Letter from [REDACTED]

In the absence of further explanation, the care provided by the applicant to the sister of the applicant's spouse fails to form the basis for a finding 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* 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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(i) 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.