

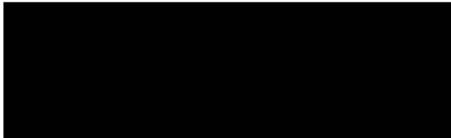


U.S. Citizenship
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FILE:



Office: PHOENIX (RENO)

Date: MAY 17 2006

IN RE:



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: Self-represented

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 District Director, Phoenix, Arizona, 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted 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 11, 2001.

The record shows that, on February 20, 1997, the applicant attempted to enter the United States by presenting an I-551 Lawful Permanent Resident Card that belonged to another. The applicant was apprehended at the Nogales, Arizona, Port of Entry and was returned to Mexico. On July 29, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On September 11, 2000, the applicant appeared at CIS' Reno District Office. The applicant admitted that he had attempted to procure admission to the United States by fraud in 1997.

On September 11, 2000, the district director issued a request for further evidence to the applicant informing him of the need to file the Form I-601 with supporting documentation. On September 11, 2000, 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 September 11, 2001, the district director issued a notice of denial of the application as the applicant was inadmissible because he had attempted to procure admission to the United States, by fraud or misrepresenting a material fact, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, the applicant's U.S. citizen spouse contends that she cannot go to Mexico with the applicant because she gets sick and she needs her husband in the United States. *Form I-290B*, dated September 25, 2001. In support of his appeal, the applicant only submitted the Form I-290B. 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 use of a lawful permanent resident card belonging to another to attempt to procure admission into the United States in 1997. The applicant does not contest the district director's determination of inadmissibility.

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.

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. *Supra.* 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 April 17, 1997, the applicant married his wife, [REDACTED] who is a citizen of the United States by birth. The record reflects further that the applicant and [REDACTED] are in their 20's and [REDACTED] has some health concerns.

[REDACTED] contends that she requires her husband's assistance in the United States "to take care of [her] . . . [the applicant] has a good job as a maintenance manager . . . [and] it would be a great disadvantage for my family" if the applicant were removed from the United States. There is no evidence in the record that [REDACTED] would suffer financial hardship if she were to remain in the United States while the applicant returned to Mexico. From the financial records on file, it appears that [REDACTED] has contributed substantially to the couple's household income over the years, averaging 54%, or approximately \$16,140. The record does not support a finding of financial loss that would result in an extreme hardship to her if she had to support the family without the additional income provided by the applicant, approximately \$13,834. Additionally, [REDACTED] has family members in the United States, with whom she has previously resided during her marriage, who may be able to provide her with financial assistance. The record shows that, even without assistance from family members, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. [REDACTED] in her affidavit, states "I need my husband here to help me we (sic) I am sick." However, [REDACTED] affidavit and the record contain no evidence to suggest that [REDACTED] requires the financial support of her spouse because her earning capabilities are diminished due her illness or she cannot obtain medical insurance through her employer. The applicant submitted copies of receipts for [REDACTED] visits to the emergency room in 2001. However, the record contains no evidence that [REDACTED] is currently undergoing treatment in the United States for any illness, what her diagnosis is, what her prognosis is or whether the illness affects [REDACTED] to such a degree that assistance from the applicant is required. There is no evidence in the record to suggest that [REDACTED] suffers 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, [REDACTED] has family members in the United States, with whom she has resided during her marriage, who may be able to support her emotionally in the absence of her husband.

[REDACTED] contends that she would suffer extreme hardship if she returned to Mexico with the applicant. On appeal, [REDACTED] states she "can not (sic) go to Mexico because I alway (sic) get sick . . . we have had several more medical expenses when we are in Mexico." [REDACTED] in her affidavit, stated she and the applicant "tried to live in Mexico with my mother and father-in-law . . . we were both working but we were not making enough . . . I suffered from poor health . . . my doctor recommended me to come back to the U.S. and seek medical treatment . . . I would come back to the U.S. twice in a year . . . and then I would go back to Mexico . . . but it was getting hard on [the applicant] and me . . . we decided to both come to the U.S. so I could get better." There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to financially support the family in Mexico or that she would be unable to meet her medical expenses in Mexico. Moreover, the applicant has family members that reside in Mexico who have, in the past, supported the applicant and [REDACTED] both financially and emotionally. The medical reports from [REDACTED] doctor's in Mexico indicate that she received adequate treatment and care for her illnesses under their consultation. The doctor's report does indicate that [REDACTED] "health worsens to the point that she has to remain in bed for several days and requires specialized medical attention . . . [and] a family members to help to give moral support during those times of sickness." However, there is no evidence in the record that [REDACTED]

█ was unable to obtain treatment in Mexico or receive the family support she required while sick in Mexico. Finally, 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 █ 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 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.