



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

Office: CHICAGO

Date:

IN RE:

[REDACTED]

NOV 10 2006

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: Self-represented

PUBLIC COPY

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, Chicago, Illinois, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

At the time of the appeal, the applicant was represented and the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative. However, on August 5, 2006, the applicant notified the AAO that the attorney of record no longer represented her and requested that all information regarding her appeal be forwarded to her only. All representations made by prior counsel will be considered but the decision will be furnished only to the applicant.

The applicant is a native and citizen of Honduras 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 and the mother of U.S. citizen children. 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 and children.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 26, 2004.

The record reflects that, on March 30, 1993, at the Houston, Texas, Port of Entry, the applicant applied for admission into the United States. The applicant presented an altered Honduran passport and U.S. nonimmigrant visa that belonged to another, under the name [REDACTED]. 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. However, the applicant was allowed to withdraw her application for admission and was returned to Honduras. 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 in November 1993.

On October 11, 1999, the applicant married her U.S. citizen husband, [REDACTED], a U.S. citizen by birth. On August 21, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On September 30, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office. On May 18, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that extreme hardship to the applicant's spouse exists and the district director erred in finding that the applicant did not establish her spouse would suffer extreme hardship. *Form I-290B*, dated June 24, 2004. In support of these assertions, counsel submitted only the above-referenced Form I-290B. Counsel indicated that he would file a brief and/or additional evidence within 120 days. At no time did counsel or the applicant forward a brief and/or additional evidence to support the appeal. The entire record was reviewed and considered 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.

- (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 applicant's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the withdrawal of application for admission documentation contained in the record. The applicant does not contest the district director's finding 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 children will not be considered in this decision, except as it may affect the applicant's spouse, 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 [REDACTED] is a native and citizen of the United States who owns a dental practice. The applicant and [REDACTED] have a three-year old daughter who is a U.S. citizen by birth. The AAO notes that [REDACTED] in his affidavit, refers to two baby daughters, however, the record only contains a birth certificate for a single daughter. [REDACTED] has a 21-year old son and a 12-year old son from previous relationships who are both U.S. citizens by birth. The record reflects further that the applicant is in her 30's, [REDACTED] is in his 50's, and there is no evidence that [REDACTED] has any health concerns.

In his affidavit, [REDACTED] asserts that he would suffer extreme hardship if he were to remain in the United States without the applicant because of what it would mean to his children to be without their mother and the prospect of having his family ripped apart is heartbreaking.

Financial records indicate that, in 2000, [REDACTED] earned approximately \$112,402 through his dental practice. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned more than sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] would essentially become a single parent, professional childcare may be an added expense and not equate to the care of a parent, and his children would be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that [REDACTED] and the applicant have worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and [REDACTED] were absent from the home due to work commitments.

In his affidavit, [REDACTED] asserts that he would suffer extreme hardship if he were to accompany the applicant to Honduras because he and his children would relocate to a third world country in which crime and disease is rampant. There is no evidence in the record to confirm that [REDACTED] and the applicant would be unable to obtain employment in Honduras. There is no evidence in the record to suggest that Mr. [REDACTED] suffers from a physical or mental illness for which he would be unable to receive treatment in Honduras. There is no evidence in the record to confirm that crime and disease is rampant in Honduras. While the hardships faced by [REDACTED] with regard to adjusting to the culture and environment of Honduras are unfortunate, they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, 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 and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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.