



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: ST. PAUL, MN

Date: NOV 30 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and 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 seeking to procure a benefit under the Act (asylum) by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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 and child.

The district director concluded that the applicant 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 December 23, 2005.

On appeal, counsel asserts that the application was improperly denied, the analysis of the evidence was incomplete and additional evidence is being submitted on appeal. *Form I-290B*, dated January 20, 2006.

The record reflects that on April 2, 1996, the applicant filed an asylum application with a false name and country of citizenship. As a result of these prior misrepresentations, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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 that:

- (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 a U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO notes that hardship to the applicant's child is only relevant to the extent it causes hardship to 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, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Mexico or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Mexico. Counsel cites several affidavits which describe the applicant's spouse's family traditions and her family ties in the United States. *Brief in Support of Appeal*, at 4-5, dated January 20, 2006. In particular, the applicant's spouse describes her close relationship to her grandmother. *Applicant's Spouse's Statement*, at 3, dated January 18, 2006. Counsel states that the applicant's spouse has close ties to her extended family and receives significant emotional support from them as well as her friends. *Brief in Support of Appeal*, at 8. Counsel states that the applicant's spouse is not fluent in Spanish, she would lose educational opportunities, the family would struggle financially and her son would face educational problems. *Id.* at 9. The applicant's spouse states that she is currently taking college courses. *Applicant's Spouse's Statement*, at 3. Counsel asserts that high unemployment rates and health care costs in Mexico would leave her destitute. *Brief in Support of Appeal*, at 10. The record does not include substantiating evidence of this claim.

There is no indication that the applicant's spouse has any ties to Mexico, other than the applicant. The applicant's spouse states that depression runs in her family, that she does not believe in taking medication to solve her problems and to take her home away from her would be devastating. *Applicant's Spouse's Statement*, at 4. Adapting to a new culture is a normal result of joining a spouse who has been removed from the United States, as is adapting to a new financial situation. The record does not reflect hardship beyond that which would normally be expected. The record reflects that the applicant's spouse will face some difficulty in relocation to Mexico, however, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse will face extreme emotional hardship via the stress she would experience should her son be separated from his father. *Brief in Support of Appeal*, at 6. The applicant's spouse details the close relationship of the applicant to their child. *Applicant's Spouse's Statement*, at 2. Counsel states that the applicant's spouse has a strong, loving relationship with the applicant and she receives a great deal of support from him. *Brief in Support of Appeal*, at 8. The applicant's spouse states that the applicant provides food, shelter and healthcare for two U.S. citizens. *Applicant's Spouse's Statement*, at 1. However, there is no indication that the applicant's spouse could not obtain employment in order to avoid financial hardship. In addition, the AAO notes that separation entails inherent

emotional stress and financial and logistical problems which are common to those involved in the situation. After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse remains in the United States.

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* 21 I & N, Dec. 627 (BIA 1996) 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.

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 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 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.