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Office: LOS ANGELES

Date: OCT 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: 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found 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). 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 and son.

The district director denied the application for waiver, finding that the applicant failed to establish that a qualifying family member would suffer extreme hardship. *Decision of District Director*, dated December 6, 2004.

The record reflects that, on April 26, 2001, 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. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on March 8, 2002. The applicant testified that he entered the United States without inspection and resided in the United States in various cities in California, between June 1991 and 2000. The applicant testified that, in 2000, he returned to Mexico in order to visit his dying father. The record reflects that the applicant's father passed away in Mexico on September 20, 2000. The applicant further testified that, after his father passed away, he applied for admission into the United States by presenting a fraudulent Lawful Permanent Resident Card, was found inadmissible by the inspections officer 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 into the United States by fraud, and was allowed to return voluntarily to Mexico. Finally, the applicant testified that he reentered the United States without inspection or admission immediately thereafter.

On March 8, 2002, 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 appeal, the applicant asserts that his wife and child need him emotionally, physically and financially. *See Applicant's Brief*, dated December 21, 2004. To support his assertions, the applicant submitted the above-referenced brief and medical documentation in regard to his child. The entire record was reviewed 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 finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted fraudulent use of a lawful permanent resident card in order to attempt to procure admission into the United States in 2000. 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. *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 March 21, 2001, the applicant married his wife, [REDACTED] who is a U.S. citizen by birth. The applicant has an eleven-year old son from a previous relationship, who is a

U.S. citizen by birth. The applicant's son has been diagnosed with Duchenne muscular dystrophy. The record reflects further that the applicant is in his 30's, [REDACTED] is in her 20's and there is no evidence that Ms. [REDACTED] has any health concerns.

The applicant asserts that his son would suffer extreme hardship if he were removed from the United States. The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers. 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 son will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The applicant contends that his spouse would suffer extreme hardship if he were removed from the United States because she needs him emotionally, physically and financially. [REDACTED] in her affidavit, states that she is not working and would be unable to maintain her and the applicant's son's standard of living without the applicant's income. The record indicates that [REDACTED] was employed as an accountant from 2001 to 2002. There is no evidence in the record to suggest that [REDACTED] would be unable to earn sufficient income to support herself and the applicant's son. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, there is no evidence to indicate that the applicant's son's biological mother is not involved in the applicant's son's life or that the biological mother would be unable to provide physical and financial support to the applicant's son. Moreover, according to the record, [REDACTED] has family members in the United States, such as her parents, who may support her emotionally, physically and financially in the absence of the applicant.

Medical documentation establishes that the applicant's son has been diagnosed with Duchenne muscular dystrophy and is being treated by a physician at Shriners Hospitals for Children in Los Angeles, California. As a patient at Shriners Hospitals for Children, the applicant's son would receive free inpatient care, including therapy, surgery and any required medical equipment. *Shriners of North America* www.shrinershq.org/index.html. Additionally, the medical documentation does not indicate the applicant's son's prognosis, treatment and does not indicate that the applicant's son requires assistance from the applicant or any other person to function on a daily basis. As discussed above, there is no evidence to suggest that the applicant's son's biological mother does not provide physical or financial support to the applicant's son or that she would be unable to do so in the applicant's absence. There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

The applicant and [REDACTED] do not contend that [REDACTED] would suffer hardship if she were to return to Mexico with him. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should she return with the applicant to 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 and, as discussed above, [REDACTED] would not experience extreme hardship if she 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 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. The AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States, and may need to file an Application for Permission to Reapply for Admission (Form I-212).

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.