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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

tlz

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FILE:  Office: PHOENIX, AZ Date: **SEP 15 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) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona 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 under 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 admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and two United States citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated June 3, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated July 2, 2004.*

In support of these assertions, counsel submits a brief dated July 30, 2004. The record also includes, but is not limited to, a letter from the applicant's spouse, undated; a letter from the applicant's spouse, dated September 8, 2002; a letter from the applicant's brother-in-law Job Davila, dated July 20, 2004; a letter from the applicant's brother-in-law [REDACTED] dated July 20, 2004; employment letters for the applicant's spouse; earnings statements for the applicant's spouse; a warranty deed for the applicant's spouse; copies of photographs of the applicant's spouse's business and home; school certificates for the applicant's children; letters of recommendations from friends of the applicant and her spouse; health insurance cards for the family; tax statements for the applicant and her spouse; a Record of Sworn Statement, dated June 7, 2002; Forms G-325A for the applicant and her spouse; Form I-94 card for the applicant; Forms I-512 authorization for parole for the applicant; Form I-485 for the applicant; a copy of the applicant's Mexican birth certificate; a copy of the applicant's spouse's naturalization certificate; a copy of the marriage certificate; copies of the applicant's children's U.S. birth certificates; and a copy of the applicant's spouse's resident alien card. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant admitted in her adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact. *Form I-485; Record of Sworn Statement, dated June 7, 2002*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 1999, the date she departed the United States. *Decision of the District Director, dated June 3, 2004*. The applicant stated under oath that she first entered the United States in July 1991. *Record of Sworn Statement, dated June 7, 2002*. She returned to Mexico in December 1991 and re-entered the United States without inspection in January 1992. *Id.* She married her husband in the United States on December 16, 1995. *Marriage Certificate*. She returned to Mexico on or about July 5, 1996, and re-entered the United States on September 15, 1996 with a passport and visa. *Record of Sworn Statement, dated June 7, 2002*. The applicant returned to Mexico in December 1999, and re-entered the United States with a B-2 visitor's visa on January 8, 2000. *Id.* The AAO also notes that the applicant re-entered the United States under an Authorization of Parole on March 24, 2001, October 1, 2001, August 8, 2004, and January 7, 2006. *See Forms I-512*. During her B-2 visitor visa interview at the

U.S. consulate in Mexico, the applicant told the U.S. consular official that she was residing in Mexico when she had actually been residing in the United States. *Record of Sworn Statement, dated June 7, 2002*. She also told the Immigration Inspector at the Port of Entry in San Diego, California she wished to enter the United States in order to visit her uncles, when in fact she was married and residing in the United States. *Id.*

Waivers of inadmissibility resulting from violations of sections 212(a)(6)(C) and 212(a)(9)(B) of the Act are dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver. The only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse if the applicant is removed. If 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, 565-566 (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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse has resided in the United States since 1985. *Attorney's brief, dated July 30, 2004*. All of his siblings, which include two brothers and three sisters, reside in the United States. *Id.* The applicant was born in Mexico and his parents remain there. *Form G-325A*. The applicant's spouse started his own restaurant in Scottsdale, Arizona and is enjoying economic success. *Id.* He was able to purchase a home in the Phoenix area where his children attend school. *Id.* He provides health insurance for his entire family in the United States. *Id.* Although the applicant's spouse has been financially successful in the United States, there is nothing in the record that shows the applicant or her spouse would be unable to find employment in Mexico in order to support their family. The AAO notes that the record does not include any documentation regarding the applicant's spouse's physical or mental health, or how they may be affected by moving to Mexico. As a native of Mexico, he would not encounter significant language or cultural adjustment. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. In addition to caring for the home, the applicant primarily takes care of her children, making sure they attend school and their extra-curricular activities. *Attorney's brief, dated July 30, 2004*. If

the applicant departed the United States, the children would remain in the United States under the applicant's spouse's care. *Id.* The applicant's spouse's siblings and parents do not live in the Phoenix area and could not assist the applicant with childcare. *Id.* The applicant's spouse would have to enroll the children in full-time child care and/or boarding school to keep up his busy work schedule. *Id.* He will probably have to support his wife's cost of living expenses in Mexico. *Id.* The applicant's spouse will have to travel to Mexico to visit the applicant several times a year. *Id.* The cost of the flight for three tickets for himself and their two children would cause great economic hardship to the applicant's spouse. *Id.* Counsel asserted that the economic situation in Mexico is not as strong as it is in the United States, and the applicant would probably have difficulty supporting herself in Mexico. *Id.* The AAO notes that counsel's assertion is unsupported by published country condition reports, and that there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. The applicant's spouse stated that he and his family would undergo a great hardship if they were separated from the applicant, as the applicant is a very big part of their family and they have two U.S. citizen children. *Letter from the applicant's spouse, dated September 8, 2002.* If the applicant were to be separated from her spouse and their family, their lives would come to a complete stop and their family would no longer exist. *Id.* The applicant's spouse would be devastated and would turn into a very depressed person if the applicant were separated from his family. *Letter from the applicant's brother-in-law [REDACTED] dated July 20, 2004.* The AAO notes there is nothing written by a professional in the record documenting the applicant's spouse's mental or physical health. 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in 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(a)(6)(C) and 212(a)(9)(B)(i)(II) 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