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



**U.S. Citizenship
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Services**

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FILE:



Office: LOS ANGELES, CA

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APR 03 2007

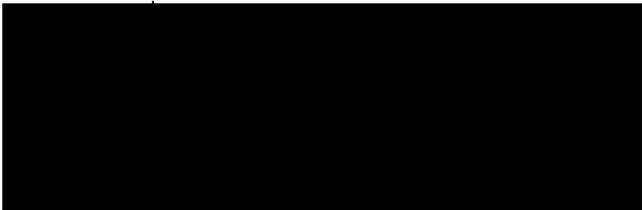
IN RE:



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)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles (Santa Ana), California, 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 by fraud or willful misrepresentation and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and subsequently departing the United States. The applicant has a U.S. citizen spouse, child and stepchild (child). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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 Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of District Director*, dated September 13, 2005.

On appeal, counsel asserts that the applicant's spouse and children will suffer extreme hardship in the event of the applicant's removal to Mexico. *Form I-290B*, received September 27, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, statements from family members, records related to the applicant's children and a psychologist's letter for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States in or about October 1996 and departed the United States for two weeks in or about May 2000. Therefore, the applicant accrued unlawful presence from in or about April 1997, the approximate expiration date of her October 1996 visitor entry, until her departure from the United States in or about May 2000.¹ As a result of her unlawful presence and subsequent departure from the United States, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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-

....

¹ Pursuant to section 212(a)(9)(B)(i)(II), individuals who have been unlawfully present in the United States for one year or more are no longer inadmissible if ten years have passed since their last removal or departure.

(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.

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.

The record also reflects that the applicant misrepresented herself as a lawful permanent resident in order to obtain employment. However, this is not a basis for determining inadmissibility under section 212(a)(6)(C)(i) of the Act. The Board of Immigration Appeals (BIA) has made it clear in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) that “working in the United States is not ‘a benefit provided under this Act.’ ” *Matter of Cervantes-Gonzalez*, at 571 (Villageliu and Schmidt, JJ., concurring) (clarifying that the benefit sought by the respondent was the right to travel with a U.S. passport and that the decision of the majority “may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act”).

As employment is not a benefit under the Act, the applicant's misrepresentation was not for the purpose of procuring “a visa, other documentation, or admission into the United States or other benefit provided under [the INA].” Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation. The AAO notes that the applicant presented a visitor visa in May of 2000 in order to enter

the United States although she was residing in the United States permanently at that time. *Applicant's Sworn Statement*, at 1-2, dated July 18, 2005. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States through misrepresentation.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship. These factors include 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, the applicant's only qualifying relative, must be established in the event that he relocates to Mexico or in the event that he remains in 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event of relocation to Mexico. Counsel states that the applicant's spouse is thirty-five years old, he has lived his entire life in the United States, he has no family or friends in Mexico, he does not know Spanish and it would be extremely difficult for him to obtain employment in his field of sales management. *Brief in Support of Appeal*, at 4, dated October 25, 2005. The record is not clear as to the number of the applicant's spouse's lawful permanent resident or United States citizen family ties to the United States and his level of closeness to them. The applicant's spouse states that he graduated from college in 1992, it has taken him ten years to obtain an income that permits him to live without major financial stress, his skills are in the field of management and sales, he does not speak, read or write Spanish, and it would be impossible for him to achieve success in a country where he cannot communicate effectively. *Applicant's Spouse's Statement*, at 1, undated. However, the record does not include country conditions information that establishes the unavailability of jobs for those fluent only in English in Mexico.

The record includes a divorce decree which reflects that the applicant's spouse has primary custody of his daughter from a previous marriage. *Judgment Entry*, at 2, undated. The AAO notes that potentially losing custody of a child is given significant weight in an extreme hardship analysis, however, the submitted document is not signed by a judge and is therefore given minimal weight. In addition, the applicant's spouse does not assert that he could lose custody of his daughter if he moved to Mexico, only that she would have difficulty adjusting to life in Mexico and that it would be traumatic for her if she were not able to see her mother frequently.

The applicant's spouse's treating psychologist states that the applicant's spouse has sought counseling for symptoms of anxiety, that he would be unable to adjust to a new country due to his anxiety and that he would not be offered the level of care need to address his symptoms. *Letter from Susan Pazak, Ph.D.*, dated October 10, 2005. Although the input of any mental health professional is respected and valuable, the submitted report does not reflect how long the applicant's spouse has been treated by the psychologist, indicate the severity of the anxiety affecting him, recommend a follow-up appointment, proposed therapy or treatment, or

establish the basis on which the psychologist has determined that the symptoms of the applicant's spouse cannot be adequately treated outside the United States. Accordingly, the AAO finds the evaluation to carry little evidentiary weight in establishing extreme emotional hardship to the applicant's spouse should he relocate to Mexico.

The AAO notes that relocation commonly entails emotional stress and financial and logistical problems for those involved. Based on the record, the applicant has not shown that the difficulties faced by her spouse would be different or more severe than those encountered by other families who have relocated as a result of removal proceedings. Therefore, the applicant has not established that it would be an extreme hardship for her spouse to move with her to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he remains in the United States. Counsel states that separation from the applicant would take a significant toll on the applicant's spouse emotionally and financially. *Brief in Support of Appeal*, at 4. Counsel states that the applicant and her spouse both contribute to the household expenses, without the applicant's income the applicant's spouse could not cover all of the household expenses, and the expenses of communicating and visiting the applicant would financially ruin the applicant's spouse. *Id.* at 4-5. The applicant's spouse states that his after-tax income is \$2800 per month, his lease is \$1750 per month, and he would not be able to cover his bills, living expenses and health insurance without the applicant's income. *Applicant's Spouse's Statement*, at 1. The record reflects that the applicant's spouse's yearly income is \$54,000 and the applicant's yearly income is approximately \$26,000. *See Letter from IMS General Manager*, dated July 11, 2005. However, the record does not include detailed documentation which would verify the applicant's spouse's claim of financial hardship if separated from the applicant. Moreover, the record does not demonstrate that the applicant would be unable to obtain employment in Mexico and use her income to reduce the financial burden on her spouse. In regard to emotional hardship, counsel contends that the applicant's spouse would suffer extreme emotional hardship if he were to be separated from the applicant. *Brief in Support of Appeal*, at 5. The record, however, does not support counsel's claim. In his statement, the applicant's spouse addresses only the toll that relocating to Mexico would take on him; the psychologist's report also focuses only on the impact of a move to Mexico. In addition, the record does not include evidence of the difficulty the applicant's spouse would face if he raised their two children on his own. Based on the record, the AAO finds that extreme hardship to the applicant's spouse has not been established in the event that he remains in the United States without the applicant.

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 notes that 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 she 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.