

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

712

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: APR 17 2007

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, Los Angeles, 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 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 procured admission into the United States by fraud or willful misrepresentation on May 10, 1998. The applicant is married to a U.S. citizen and is the son of two lawful permanent residents. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the evidence in the record did not show that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated April 12, 2005.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States and that various factors in the applicant's case were either not considered or were given improper weight by the examiner. *Counsel's Brief*, received June 10, 2005.

The record indicates that on May 10, 1998, the applicant attempted to enter the United States using the false name of "Ramon Aguilera."

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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien himself experiences or his children experience due to the applicant's inadmissibility is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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, 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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that extreme hardship to the applicant’s spouse and/or parents must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or parents in the event that they reside in Mexico. The applicant’s spouse states in her declaration, dated May 6, 2005, that she was born and raised in the United States and that her parents are lawful permanent residents. She states that the situation in Sinaloa, Mexico, where the applicant is from is very difficult. The applicant’s spouse is pregnant with the couple’s second child and she states that in Mexico it would be extremely hard for the applicant to find a job and support his family. The applicant’s spouse states that she will not be able to work because she will have to care for their newborn baby and that she is concerned for her children’s educational opportunities and future in Mexico. The applicant’s spouse also asserts that the family would lose their medical insurance if they relocated to Mexico because the applicant’s job currently provides the family with medical insurance. In support of these assertions, the applicant submitted various country condition reports on Mexico. The AAO notes that the letter submitted from the District Commissioner in Sinaloa

Mexico is in Spanish and was not translated into English. Thus, it will not be considered in determining extreme hardship. Pursuant to the regulation at 8 CFR § 103.2(b)(3), an applicant must provide an English translation for all documents in a language other than English. The AAO also notes that a large portion of the country reports concern children and the conditions in Mexico in regards to education and childhood development. As stated above, hardship the applicant's children would experience due to the applicant's inadmissibility is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. The current record does not relate the hardship experienced by the applicant's children to the hardship then felt by the applicant's spouse. The country condition reports do state that the minimum wage in Mexico does not provide a decent standard of living, that 53% of the country's population is poor with 24% percent being extremely poor, and that there has been minimal generation of jobs in the last four years. These country condition reports paint a bleak picture of the Mexican economy, however, they do not speak to the possibility of the applicant, a construction worker, finding employment. The record does not provide evidence to document that the applicant would be paid minimum wage working in construction or that his family would not have access to health coverage in Mexico. The record contains a psychological assessment interview and evaluation by [REDACTED] a registered psychologist. The report indicates that the applicant and his spouse were initially interviewed on January 29, 2004 and then evaluated again on April 26, 2005. Ms. [REDACTED] reports that the applicant's spouse has never left her hometown or family and that relocating to Mexico would create a loss of her current social network in the form of her friends, her family and her church. Ms. [REDACTED] notes that in light of the extreme difficulty that applicant's spouse is having adjusting to the thought of separating from her family, it can only be expected that actual separation and culture shock would be emotionally devastating for her.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on two interviews with the applicant's spouse, the first occurred in connection with the applicant's waiver application and the second after the waiver application was denied. Accordingly, the record fails to reflect an ongoing relationship between Ms. [REDACTED] and the applicant's spouse and the conclusions reached in the submitted report do not reflect the insight and elaboration commensurate with an established relationship, thereby rendering Ms. [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship. Further, the AAO notes that although Ms. [REDACTED] has found the applicant's spouse to be suffering from severe depression and anxiety, she has not indicated any course of treatment of medication as being required as a result of this diagnosis. Therefore, the AAO finds that the current record, does not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico.

In addition to the applicant's spouse's concerns for herself and her children, the applicant's spouse expresses her concerns for the applicant's mother, who suffers from Parkinson's disease, osteoporosis, migraines, and back problems. She states that the applicant is always worried about his parent's well being. The applicant's spouse states that her mother suffers from diabetes. She states that the applicant's parents and her parents will suffer extreme hardship if the applicant is refused admission. The applicant submitted various medical reports for his mother which state that she suffers from Parkinson's disease, osteoporosis and sees a doctor on a regular basis. The applicant also submitted medical records for his spouse's mother showing that she suffers from diabetes. These medical reports establish that the applicant's mother and mother-in-law have medical problems, but they are not proof that his mother would suffer extreme hardship as a result of relocating to Mexico or that the applicant's spouse would suffer extreme hardship as a result of leaving her diabetic mother

to relocate to Mexico. There is no documentation showing that the applicant's spouse's mother requires the constant care of her son. Concerning the possible hardship to the applicant's mother if she were to relocate to Mexico, the medical records for the applicant's mother show that she was in Mexico for a period of time in April 2005. On April 13, 2005, the mother's doctor's office wrote, "patient was called to follow-up with doctor. Patient's daughter let me know she is in Mexico and will call as soon as she comes back." The Mexican *Health Situation Analysis and Trends Summary for 1998*, submitted by the applicant also indicates that the elderly are able to receive health care in Mexico. The AAO finds that the record does not show that the applicant's mother would suffer extreme hardship as a result of relocating to Mexico. No statements and/or evidence were submitted regarding the applicant's father.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and/or parents remain in the United States. The applicant's spouse states in her declaration that the applicant is very supportive and plays an active role in his son's life. She states that if the applicant is removed from the United States she would suffer emotionally and financially. The applicant's spouse asserts that after receiving the denial of the applicant's waiver application her life has become distressing and very upsetting and that it has caused great anxiety to her entire family. In support of her emotional suffering, the record contains the previously noted psychological assessment by [REDACTED]. Ms. [REDACTED] reports that the applicant's spouse's present state of anxiety, depression and stress are having a tremendous negative impact on her health and that the removal of the applicant would represent an extreme and unnecessary hardship for the applicant's spouse and her children. Although, it notes Ms. [REDACTED]' findings, the AAO, for the reasons previously discussed, finds them to have little evidentiary weight and to fail to establish that the applicant's spouse would suffer extreme emotional hardship if she were to remain in the United States without the applicant.

The applicant's spouse also states that that the applicant is the main financial support of the family and that she will suffer financially if the applicant is removed from the United States. In support of these assertions the applicant submitted his W-2 Forms and income tax returns for the years 1994 to 2004. The AAO notes that these documents show the applicant's income only, but do not establish his family's expenses and thus, the financial impact of his removal. The AAO recognizes that the applicant's spouse and/or parents will endure hardship as a result of separation from the applicant. However, the current record does not establish that their situation is different from that of other individuals separated as a result of removal.

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.

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 an 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.