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U.S. Citizenship
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Services

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112

FILE:

Office: PHOENIX, AZ

Date:

AUG 03 2007

IN RE:

Applicant:

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:

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 application was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

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). The applicant seeks a waiver of her ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that she did not present sufficient evidence of her husband's hardship in her I-601 filing due to ineffective assistance from a non-attorney immigration consultant. The applicant requests, on this basis, to submit additional evidence regarding her case on appeal. The additional evidence consists of an appeal brief, an expanded affidavit from the applicant's husband, additional affidavits attesting to the good character of the applicant's family, and school record information for the applicant's eldest daughter. Upon review of the record, the AAO will accept the additional and expanded evidence as a matter of discretion.

The applicant asserts that her husband is a U.S. lawful permanent resident, and that she and her husband have three U.S. citizen children. The applicant indicates that she cares for their children, and that her husband is the sole financial provider for their family. The applicant asserts that her husband would suffer extreme financial and emotional hardship if he remained in the United States with their children, or if he moved with their family to Mexico in order to keep the family together.

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) provides in pertinent part that:

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, in that, on or about October 28, 1997, she presented fraudulent documentation to U.S. officials in an attempt to gain admission into the United States. The applicant's October 28, 1997, Form I-213, Record of Deportable Alien reflects further that the applicant's husband attempted to smuggle the applicant into the United States by presenting counterfeit temporary lawful admission for permanent resident documents to a U.S. official. The applicant was allowed to withdraw her application for admission on October 28, 1997. She subsequently entered the United States without admission or parole on an unspecified date.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 applicant's husband is a U.S. lawful permanent resident. He is thus a qualifying relative for section 212(i) of the Act purposes. U.S. citizen or lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included the presence of a lawful permanent resident or United States citizen spouse or parent in 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant asserts, through counsel, that her husband is a U.S. lawful permanent resident, and that the applicant has been married to her husband and has lived with him in the United States since 1994. The applicant indicates that her husband would miss her emotional and motherly support if they were separated, and that he would suffer financial hardship if the applicant did not care for their children in the United States. The applicant asserts that her husband would also suffer extreme emotional hardship if he and his children moved to Mexico because his eldest daughter is a good student, and he wants to provide her with educational opportunities in the United States.

To support her assertions, the applicant submits affidavits from her husband and herself. The applicant also submits copies of her eldest daughter's school records and certificates, and the applicant submits character reference letters stating that the applicant's family is a close family, and that they are good people.

The applicant's husband asserts in his affidavits that he, his wife and their U.S. citizen children (born April 20, 1995, January 7, 2002, and October 4, 2003) are a close family and that he would suffer extreme emotional hardship if the family were separated. The applicant's husband asserts that he is the sole financial provider for his family, and that his wife is the primary caretaker for their children. He states that he would suffer extreme financial hardship if he had to pay for a caretaker for his children while he worked. He additionally states that he would suffer extreme financial hardship if he had to pay for a separate place for the applicant to live in Mexico.

The applicant's husband additionally asserts that his eldest daughter (age twelve) is a good student who recently made the honor roll. He states that his daughter's English is better than her Spanish, that he's not sure how his daughter would perform academically in Mexico, and that he would suffer emotional hardship if he were unable to provide the educational opportunities available in the United States to his daughter.

The applicant requests in her affidavit that her family not be separated.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, and he remains in the United States. The hardship claims made on appeal lack material detail, and the record lacks corroborative evidence to illustrate or establish that the applicant's husband would either suffer extreme financial hardship if the applicant were denied admission into the United States, or that he would suffer emotional hardship beyond that commonly associated with removal if she were denied admission into the United States. The Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation. Furthermore, 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.

The record also lacks evidence to establish that the applicant's husband would suffer extreme emotional or financial hardship if he moved with his family to Mexico. The U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship. The present record reflects, moreover, that the applicant's husband is familiar with the language, culture and environment in Mexico, as he is originally from Mexico, and he met and married the applicant in Mexico.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.