



U.S. Citizenship
and Immigration
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AUG 03 2007

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date:

IN RE:

Applicant:

[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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Honduras 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 admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The Director denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated August 15, 2005. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

In a sworn statement, the applicant admitted that she attempted to enter the United States by presenting to immigration officials a passport and visitor visa bearing her sister's identity. Record of Sworn Statement – Witness. It is noted that the applicant signed the sworn statement using the name [REDACTED]. As the applicant misrepresented her identity so as to gain admission into the country, the director was correct in finding her inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's mother, who is a lawful permanent resident, and her husband, who is a naturalized citizen of the United States. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's mother or husband must be established in the event that she or he joins the applicant; and in the alternative, that she or he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel states that the facts in the Astigarraga case are distinguishable from those in *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984), *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978), *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), *INS v. Jon Ha Wang*, 450 U.S. 139 (1981), and *Silverman v. Rogers*, 437 F.2d 102, 107 (1st Cir. 1970). According to counsel, in *Ngai* the couple had a 28-year voluntary separation; and the husband did not wish to reunite with his wife, who was self-supporting, if she were admitted into the United States. Counsel states that the applicant has lived with her husband since their marriage on March 29, 1997; separation would be painful for them. They are financially dependent on each other and both provide care for their children. Counsel states that unlike *Chumpitazi* and *Perez*, the present case involves family separation; and deprivation of economic and medical resources if the [REDACTED] family moves to Honduras or Paraguay. According to counsel, the applicant has never lived in Paraguay; her husband has never lived in Honduras;

and their children have never lived anywhere but the United States. If the applicant leaves the United States, counsel states that her husband would become a single parent, causing him and his children to suffer. Counsel states that unlike *Jon Ha Wang*, the applicant's husband is not inadmissible and their hardships are more than economic. Counsel further states that the district director did not correctly apply the Cervantes factors and weigh the submitted evidence. According to counsel, [REDACTED]'s spouse and children are in the United States; he has not lived in Paraguay since 1984. His father is 76 years old; his mother is 68 years old; they live in Paraguay and rely on their son for support. His siblings live in Paraguay also. Counsel states that [REDACTED] created a close-knit community for himself in the United States with his wife, children, co-workers, and friends. He works for Condell Medical Center and Libertyville Civic Center. According to counsel, [REDACTED] and his first wife did not have children together. Counsel asserts that if the waiver is not granted, [REDACTED] would have to abandon home, job, and friends, which would be difficult as his life is in the United States. Counsel states that [REDACTED] is unfamiliar with the job market in Honduras, and knows there is no work in Paraguay. [REDACTED] cannot picture the absence of his wife or raising two children alone. According to counsel, [REDACTED] is forced to make a decision that nobody should have to make: abandoning life in the United States to live in Paraguay or Honduras and begin an uncertain life or separation from his wife and raising his children without her or sending them to Honduras and live a life without his family. Counsel states that unlike *Silverman*, [REDACTED] is not requesting a waiver of the two-year foreign residence requirement for a J visa. Counsel claims that the [REDACTED] will not be able to provide a good education and regular access to health care in Paraguay and Honduras. Counsel states that [REDACTED] performs manual labor, doing maintenance and working as a courier. He does not have employment skills that would allow him to easily find employment in Honduras or Paraguay, where there is high unemployment and poverty. According to counsel, [REDACTED] could not support two households on his \$45,000 income. He states that in the United States, the Astigarragas own their own home and provide for their children's needs. If they left the United States, they would have to sell their home. Counsel states that if [REDACTED] remained in the United States, he would have to pay for caretakers and babysitters and take time off work. His children would not have their mother's constant care. According to counsel, [REDACTED]'s mother is sixty-two years old and she has health problems. Counsel states that [REDACTED] is a loving mother and wife, a hard worker, and an active church member. Counsel asserts that the waiver and exercise of discretion should be granted.

The record contains photographs; federal income tax returns; W-2 statements; letters from employers, friends, [REDACTED], and family members; information about Honduras and Paraguay; birth certificates; a marriage license; affidavits; school records; a letter from [REDACTED], and other documents.

The principal content of the applicant's affidavit is reflected in counsel's brief. In addition, in her affidavit she states that she has two jobs, working as a dental assistant and a building attendant. Her mother lives with her half of the year and with her sister who lives in Texas the other half of the year. Her mother has never worked and relies on them for income. *Affidavit from the applicant.*

[REDACTED] affidavit is similar in content to counsel's brief. The record reflects that the [REDACTED] have two children, aged five and eight years old. It conveys that the applicant's mother is a lawful permanent resident. The letters in the record describe the good character of the applicant and her husband. [REDACTED] indicates that he sends money each month to his parents and nephew who live in Paraguay.

The Ninth Circuit has stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, the fact that an applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee’s child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

There is insufficient evidence in the record to establish that the applicant’s husband or mother would endure extreme hardship if the waiver application is denied.

The income tax records indicate that the applicant and her husband had income of \$86,104 in 2004. The W-2 forms reflect the applicant’s husband as earning \$45,712 in 2004 and his wife’s as \$9,966. Miscellaneous income is shown as \$2,550. *Form 1099-MISC*. The AAO notes that the balance of \$27,876 is not accounted for in the submitted records. The record has no documents on the [REDACTED] household expenses. Thus, the submitted evidence is insufficient to establish that the applicant’s husband relies on the applicant’s earnings in order to meet the family’s expenses. Although [REDACTED] states that her mother lives with her for six months each year and relies on her for financial support, there is no substantiating documentation to corroborate this. The affidavit of the applicant’s sister indicates that the applicant “cares for our mother who is 62 years old”; however, this does not represent the applicant’s mother as living with the applicant for six months of the year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

The applicant and her husband are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the record. After careful consideration, it finds that the situation of the applicant's husband and mother, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by the applicant's husband and mother is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra.* Although the AAO recognizes the unhappy prospects which the applicant's family faces, it finds that the factors needed to categorize hardship as extreme are not present in this case.

The AAO will now consider whether the applicant's husband or mother would endure extreme hardship if she or he joined the applicant in Honduras.

The conditions in Honduras, the country where the applicant's husband and mother would live if they joined her, are a relevant hardship consideration. The record contains the U.S. Department of State report on Honduras for 2004; it reflects that about two-thirds of the country's households live in poverty and 45 percent of the population lives on less than \$1.00 per day. [REDACTED] indicates that he has no family or friends in Honduras and that he does not think he can support his family there or in Paraguay. He indicates that he will have to sell his house in the United States.

Count decisions have shown that the difficulties [REDACTED] may experience in obtaining employment in Honduras or in Paraguay, and the hardships that are a consequence of this, such as a lower standard of living and a lower standard of health care, are insufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship"); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship)("It is only when other factors such as advanced age, illness, family ties, etc., combine with economic detriment that deportation becomes an extreme hardship").

The loss on the sale of a house does not, in itself, constitute extreme hardship. *See, e.g., Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985) (loss on the sale of [REDACTED] house and the loss of his present employment and its benefits do not constitute extreme hardship).

Although counsel states that the applicant's mother has health problems, there no evidence in the record establishing that she or any other member of her family has a severe health condition and that medical treatment is unavailable in Honduras or Paraguay. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). The AAO finds that the additional hardship factors that are needed to justify a grant of relief are unfortunately not present in the instant case.

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, is a relevant consideration. Counsel asserts that the [REDACTED] will not be able to provide regular access to health care and a good education and for their children if they live in Paraguay or in Honduras. In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), a case relating to access to health care, [REDACTED] had stated that "[h]ealth care is for the most part unavailable in the [REDACTED] home town in Mexico and the cost for treatment where available is excessive." The court found the claim insufficient to constitute extreme hardship even if supported by competent evidence, and cited to *Bueno v. INS*, 578 F.Supp. 22, 25 (N.D.Ill.1983) (will consider availability of medical care nationwide). Furthermore, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*.

The record indicates that the applicant's seven-year-old son attends grammar school. The [REDACTED] do not claim that their children are not academically proficient in Spanish. With regard to a child's education in a foreign country, in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, Banks herself admitted that Diana would be able to learn the German language." Applying the reasoning in *Ramirez-Durazo* and *Banks*, the AAO finds that reduced educational opportunities in Honduras or Paraguay are not sufficient to demonstrate extreme hardship under the Act.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.