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FILE:



Office: NEWARK, NJ

Date:

AUG 28 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)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the waiver application, and it 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 is 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident and the mother of two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), 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. The district director also found that the applicant would not warrant a favorable exercise of discretion and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 5, 2005.

The record reflects that, on June 26, 1990, the applicant married her spouse, [REDACTED] a native and citizen of Mexico. On December 1, 1990, [REDACTED] became a lawful permanent resident of the United States. On November 30, 1992, [REDACTED] filed a Petition for Alien Relative (Form I-130), which was approved on December 4, 1992. On August 5, 1995, the applicant applied for admission at the Laredo, Texas Port of Entry. The applicant presented a U.S. Birth Certificate bearing the name [REDACTED]. The applicant was placed into proceedings. On August 10, 1995, the applicant was convicted of attempting to enter the United States by willfully false or misleading representations or willful concealment of a material fact in violation of 8 U.S.C. § 1325(a)(3). The applicant was sentenced to three years of probation. The applicant was permitted to return voluntarily to Mexico. On August 10, 1995, the applicant again applied for admission at the [REDACTED] Texas Port of Entry. The applicant presented a U.S. Birth Certificate bearing the name [REDACTED]. The applicant was placed into proceedings. On August 18, 1995, the applicant was convicted of attempting to enter the United States by willfully false or misleading representations or willful concealment of a material fact in violation of 8 U.S.C. § 1325(a)(3). The applicant was sentenced to three years of probation. The applicant's probation for her prior conviction was revoked and she was sentenced to time served. On June 11, 1996, the applicant failed to appear before the immigration judge. The immigration judge ordered the applicant's application for admission to be considered withdrawn. On December 9, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On June 21, 2001, the applicant appeared at the Citizenship and Immigration Services' (CIS) New Jersey, New Jersey District Office. She testified that she had attempted to enter the United States twice by making a false claim to U.S. citizenship and last entered without inspection in 1988. The applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse and children.

On appeal, counsel contends that the district director gave too much weight to the unfavorable factors in the present case and applied an incorrect understanding of the law to the applicant's case. Counsel contends that the district director failed to adequately consider the applicant's vast favorable factors. *See Counsel's Brief*, submitted December 6, 2005. Counsel, in support of his assertions, submits the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to making a false claim to U.S. citizenship in an attempt to enter the United States on two occasions in 1995. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the applicant or her children is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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 record reflects that [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant and [REDACTED] have a 13-year old son and a six-year old daughter who are both U.S. citizens by birth. The applicant is in her 30's and [REDACTED] is in his 40's.

Counsel contends that, although direct hardship to the applicant's children may not be relied upon to establish extreme hardship in the present case, the district director erred in failing to consider the difficulties that Mr. [REDACTED] would face in dealing with the hardships that would be imposed on his children should they move to Mexico. The AAO notes that hardship to the applicant's children that affects that applicant's spouse, the only qualifying relative, may be considered in establishing extreme hardship.

On appeal, counsel contends that, both psychologically and emotionally, [REDACTED] requires the applicant's presence to raise their two children. He asserts that [REDACTED] works during the day and the applicant works at night, so that one of them is always at home with the children. He asserts that without the applicant's income the family will be out on the street because [REDACTED] will be unable to find the money to pay the mortgage or credit card debt. He asserts that [REDACTED]'s expenses are approximately \$1,200 above his income per month.

[REDACTED] in his affidavit, states that he and the applicant are very involved parents who work opposite shifts to ensure that one of them is home with the children. He states that, in 1993, he and the applicant had a child who died shortly after birth due to a heart defect. He states that the loss of this child was a terrible loss and it makes them cherish every moment with their children. He states that he cannot imagine life without the applicant because she is such an integral part of the children's upbringing and his wellbeing. He states that the children have both been very upset since he told them about the applicant's immigration situation. He states that he does not see how he could provide for his children without the applicant's income. He states that he is self-employed and that his pay is not steady and cash inflow is seasonal. He states that the applicant's income stabilizes their cash flow. He states that the applicant's income is necessary to meet all of the household bills, which average \$4,000 per month, while his income averages \$2,800 per month. He states that they also owe \$16,000 in credit card debt and need to meet the mortgage payments.

A Pennsylvania Certificate of Death establishes that, on February 18, 1993, the applicant's and [REDACTED]'s eight-day old daughter passed away from congenital heart disease. However, the record does not contain evidence that [REDACTED] has sought or received any treatment or evaluation for psychological problems stemming from the loss of this child that would cause him to suffer hardship beyond that commonly experienced by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would experience anxiety and depression as a result of separation from his spouse and the separation of his children from their mother, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal.

While [REDACTED] asserts that he needs the applicant's income in order to be able to raise his children, the record does not demonstrate that he would be unable to support himself and his children without the applicant's income. The record shows that, even without assistance from the applicant, [REDACTED] earns sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, [http://\[REDACTED\]](http://[REDACTED]). While the AAO acknowledges that [REDACTED] may have to lower the family's standard of living, the record does not contain sufficient evidence to establish that Mr. [REDACTED] would be unable to support himself and his children without the financial support of the applicant. Further, although it is unfortunate that [REDACTED] may essentially become a single parent and have the added expense of paying for childcare, this is also not a hardship that is beyond those commonly faced by aliens and families upon removal. Accordingly, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he remained in the United States and had to support himself and his children, even when combined with the emotional hardship described above.

Counsel, on appeal, asserts that, if [REDACTED] accompanied the applicant to Mexico he would be forced to attempt to maintain his family's expected standard of living, obtain schooling for his children and make the children learn to speak Spanish.

[REDACTED] in his affidavit, states that the majority of his family's extended family lives in the United States. He states that his children are very close to his sister, who lives in the United States. He states that the family owns the same house in which both of his children have been raised and that the children have never known any other home. He states that the children attend school, church and are fully culturally assimilated to the United States. He states that the children would not fit in, in Mexico.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] would suffer if he were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. [REDACTED] does not indicate that he would lose his business were he to relocate to Mexico and there is no evidence in the record that [REDACTED] and the applicant would be unable to obtain *any* employment in Mexico. While the employment [REDACTED] and the applicant may be able to obtain in Mexico may not be comparable to the employment they would have in the United States or allow for the standard of living to which they are accustomed, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). Moreover, the record reflects that the applicant and [REDACTED] have family members in Mexico, such as their parents, who may be able to assist the applicant and [REDACTED] physically and financially. While the hardships that would be faced by [REDACTED] in relocating to Mexico--his and his children's adjustment to the culture, economy, environment, language, separation from friends and family, and an inability to obtain the same opportunities he and his children would receive in the United States--are unfortunate, they are what would normally be encountered by any spouse accompanying a removed alien to a foreign country. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, *Supra.*; *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme

hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. [REDACTED]*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of two counts of attempting to enter the United States by willfully false or misleading representations or willful concealment of a material fact, crimes involving moral turpitude. A waiver of inadmissibility under 212(a)(2)(A)(i)(I) of the Act is available pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). A section 212(h) waiver is either dependent upon a showing of rehabilitation, if it has been more than 15 years since the activities occurred that gave rise to the inadmissibility, or that the bar to admission would impose an extreme hardship on the U.S. citizen or lawfully resident spouse, child or parent of the applicant. As such, the AAO would adjudicate whether the applicant meets the more restrictive requirements of a section 212(i) waiver before it determined whether the applicant is eligible for a section 212(h) waiver. In the present case, extreme hardship under section 212(i) of the Act has not been established and no purpose would be served in considering whether the applicant the applicant is eligible for a waiver pursuant to section 212(h) of the Act.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. The AAO notes counsel’s assertions regarding the weight the district director gave to the applicant’s favorable and unfavorable factors. However, the weighing of such factors is relevant only in determining whether the applicant warrants a favorable exercise of discretion following a determination of extreme hardship. In the present case extreme hardship has not been established.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.