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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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DEC 04 2007

FILE:

[Redacted]

Office: LOS ANGELES, CA

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, Los Angeles, California, 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 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated September 23, 2005.

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 record reflects that the applicant sought to enter the United States on March 31, 1997 by presenting to immigration inspectors a fraudulent Form I-551, resident alien card. *Record of Deportation/Inadmissible Alien, dated April 2, 1997*. The AAO finds that the documentation in the record supports the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to gain admission into the United States by fraud or willfully misrepresenting a material fact to immigration officials.

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 his children are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is Patricia Espinoza, the applicant's naturalized citizen wife. 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 contains a letter from [REDACTED], L.C.S.W., wage statements, income tax records, the Form 1099-Misc, a marriage certificate, birth certificates, a naturalization certificate, letters, a Verizon Wireless invoice, a settlement document pertaining to a residential mortgage, and other documents.

The AAO has carefully considered all of the documentation in the record in rendering this decision.

“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 wife must be established in the event that she joins the applicant; and in the alternative, that she 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.

In the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), the applicant states that his wife, who he has a close and loving relationship with, would experience extreme hardship in the event they are separated. He submits a letter from [REDACTED] in support of his claim that his wife is undergoing stress therapy.

The October 25, 2005 letter from the applicant’s wife, which is submitted on appeal, states that she has been married to the applicant for 10 years and that they have three children and a strong family and home. She states that without the applicant she would not be able to afford the mortgage. [REDACTED] states that the applicant’s absence would affect her and her children, as the applicant is the father figure and leader.

The letter from the applicant’s children describes their close relationship with their father.

The October 25, 2005 letter from [REDACTED] states that the applicant’s wife is receiving counseling services to better cope with her husband’s immigration issues and her financial and emotional dependence on her husband.

The unsigned letter in the record commends the applicant's character.

█ claims that she would experience financial hardship if she remained in the United States without her husband. The most recent tax documentation in the record is for 2004. In that year, the applicant's business had gross sales of \$56,003 and a net profit of \$10,196; he earned \$25,889.50 as an employee of the business. █ earned \$4,668. The total income of the █ in 2004 is shown as \$30,559. The record shows that the █ purchased a house for \$163,000 in 2002. It shows that they have three children who are 13, 9, and 4 years old. The documentation in the record, the AAO finds, is sufficient to establish that █ income is not enough to meet monthly household expenses for a family of four. Thus, the applicant has demonstrated that his wife would experience extreme financial hardship in his absence.

The record, however, is insufficient to establish that the applicant's wife would endure extreme hardship if she joined the applicant in Mexico. The applicant makes no hardship claim in the event that his wife joined him to live in Mexico.

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.

The applicant has established extreme hardship to his wife in the event that she remained in the United States without him. However, he has not established that she would experience extreme hardship if she were to join him to live in Mexico. Thus, 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 under section 212(i) of the Act. 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 section 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.