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FILE: [REDACTED] Office: LOS ANGELES, CA Date: DEC 27 2007

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:



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, Mr. [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 August 25, 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 on February 5, 1999, the applicant presented to an immigration official at the Highway 111 Border Patrol Checkpoint a permanent resident card in the name of [REDACTED] so as to gain entry into the United States. The record therefore supports the finding that the applicant willfully misrepresented a material fact, his true identity, so as to gain admission into the United States; accordingly, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 stepchildren 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 stepsons will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. 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 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.

The record contains income tax records; letters; a mortgage invoice; a deed of trust; birth certificates; a marriage certificate; a disability status letter; employment letters; an undated letter from [REDACTED] a chiropractor; and other documents.

In the undated letter, Mr. [REDACTED] states that the applicant’s wife, [REDACTED] is under his care for work injuries. The letter states that due to the severity of the injury Ms. [REDACTED] has been on “Totally Temporary disability since 01/16/2003” and that “she continues to be disable[d] at this time.”

The letter from Ms. [REDACTED] states that her husband is the only one in the household who is able to work as she is disabled and does not know how long it will take for her to recuperate. She states that separation from the applicant will be painful economically and emotionally for her and her children, who have changed since the applicant has lived with them as he loves and cares for the children. Ms. [REDACTED] states that her husband is a very good man.

The letter from the applicant’s stepsons, who are 17 and 15 years old, conveys they have a close relationship with their stepfather.

The disability status letter dated October 2, 2003 reflects that Ms. [REDACTED] is permanent and stationary, that she is precluded from engaging in her usual occupation, and that “vocational rehabilitation is indicated.”

The [REDACTED] monthly mortgage is \$1,621.45.

The August 27, 2002 letter from Apple One Employment Services states that Ms. [REDACTED] has been temporarily employed since August 12, 2002 and earns \$7.00 per hour.

The July 27, 2002 letter from [REDACTED] states that the applicant has been employed for six months and earns \$10.00 per hour as a carpenter.

The W-2 records for 2001, the most recent tax year, reflect income of \$15,882 for the applicant and \$4,086 for his wife.

On appeal, counsel states that the applicant and his wife purchased a home in 2003 and that Ms. [REDACTED] would not be able to afford the mortgage without the applicant's income. Counsel states that Ms. [REDACTED] continues to suffer from a workplace injury that has resurfaced and may require additional surgery. Counsel states that during a routine breast examination, a lump was detected on Ms. [REDACTED] breast that requires further testing. Counsel indicates that the record will be supplemented if the applicant's wife requires additional surgery or has cancer. Counsel states that the applicant, a construction worker, assumed the father and caretaker roles in the family.

The record establishes that the applicant's wife would experience extreme hardship if she remained in the United States without the applicant.

The record shows that Ms. [REDACTED] has a workplace injury. Although the nature of the injury is not disclosed in the record, the disability status letter dated October 2, 2003 reflects that Ms. [REDACTED] is precluded from engaging in her usual occupation, and requires vocational rehabilitation. Prior to the injury, the record reveals that Ms. [REDACTED] earned \$4,086 in 2001, \$17,941 in 2000, and \$15,605 in 1999. The AAO finds that Ms. [REDACTED] most recent income of \$4,086 is not sufficient to meet the family's household expenses and the \$1,621.45 monthly mortgage; the applicant's income is also needed. The AAO therefore finds that the applicant established that his wife would experience extreme financial hardship if she were to remain in the United States without him.

The present record 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 if his wife were to join 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 record supports a finding of extreme hardship in the event that the applicant's spouse were to remain in the United States without him. However, the applicant makes no hardship claim if his wife were to join him in Mexico. Thus, the applicant fails to establish 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.