

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

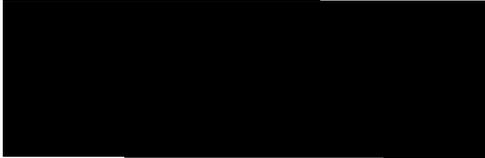
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H/2

PUBLIC COPY



FILE:

Office: CHICAGO, ILLINOIS

Date: JAN 03 2007

IN RE:

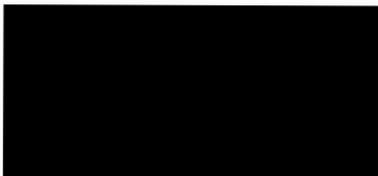
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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 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 is a native and citizen of Mexico who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel contends that the applicant's wife would suffer extreme hardship whether she remains in the United States without the applicant or accompanies him to Mexico. Counsel notes that the applicant's wife is unable to work due to a lump on her wrist. In support of this assertion, counsel submits two almost illegible copies of prescription slips signed by Dr. [REDACTED]. Counsel also states that the applicant's youngest child suffers from developmental disabilities that require on-going physical and psychological care. In support of this contention, counsel submits a copy of a prescription slip signed by Dr. [REDACTED]. The entire record was reviewed and considered in rendering this decision to dismiss the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of an I-551 card not legally issued to him in order to procure admission into the United States in 1992. Counsel does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen children will therefore be considered in this analysis only insofar as it affects the hardship experienced by his spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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 § 212(i) of the Act. These factors include, with respect to the qualifying relative, These 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 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).

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).

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant, as most of her relatives reside in the United States. Counsel notes that the applicant's wife has focused on building a strong foundation in the United States rather than maintaining ties in Mexico. Also, noting the poor economic conditions in Mexico, counsel states that the applicant and his wife would most likely be unable to find employment in Mexico. The record does not contain any documentation, however, regarding the psychological impact that returning to her native country would have on the applicant's wife. Furthermore, there is no information on the record in support of the contention that the applicant and his wife would be precluded from obtaining employment in Mexico due to the economic

conditions there. The record does not establish the nature and extent of the employment possibilities available to the applicant and his spouse in Mexico. The AAO notes that a change in employment and/or economic status often accompanies a relocation abroad as a result of removal and does not constitute extreme hardship.

Counsel asserts that if the applicant were removed from the United States, leaving his wife here without him, she would be unable to meet her financial obligations and would be forced to request public assistance. Counsel asserts that the applicant's wife suffers from a lump on her wrist that prevents her from working. The prescription slip signed by Dr. [REDACTED] on June 3, 2005 indicates that the applicant's wife had a ganglion cyst on her right wrist, and that she was unable to work. The prescription slip does not mention whether Dr. [REDACTED] is the treating physician, the duration of the condition, or the prognosis. According to the Internet encyclopedia, *Wikipedia*, ganglion cysts are generally not harmful and are relatively easy to treat. *See: http://en.wikipedia.org/wiki/Ganglion_cyst*. There is no evidence on the record that the applicant's wife suffers from a long-term, debilitating condition or that she cannot work. The possibility that she might require childcare in order for her to work outside the home does not constitute an extreme hardship, as it is common to such situations.

Counsel contends that the applicant's youngest child is developmentally disabled, but there is no evidence on the record that such a condition on the child's part would cause the applicant's wife to suffer extreme hardship in the event of his removal. Furthermore, the medical evidence submitted does not support counsel's contention. The prescription slip signed by Dr. Bustamante on June 13, 2005 does not indicate whether Dr. [REDACTED] is the child's physician nor does it include any detail regarding the child's condition. The prescription slip indicates that the child suffers from "failure to thrive" and requires strict supervision of his diet. The doctor's note at the bottom of the slip to the effect that the applicant's wife is unable to work to care for their son is not supported by the record, as noted above.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United States. 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*, 96 F.3d 390 (9th Cir. 1996); *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). *Perez v. INS*, *supra*, defined "extreme hardship" as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal.

The AAO does not disregard or take lightly the applicant's wife's concerns regarding the choices and changes she may face due to the applicant's inadmissibility; however, her experience is not demonstrably more negative than that of other spouses separated as a result of removal. In proceedings for application for waiver of grounds of inadmissibility under § 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.