



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: PHOENIX, AZ

Date:

JUL 18 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:
[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 Acting District Director, Phoenix, AZ, 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 was found to be inadmissible to the United States under section 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 U.S. citizen spouse.

The acting district director concluded as follows: "...A review of the documentation in the record, when considered in its totality, reflects that you have failed to show that the qualifying relatives would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member..." The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Acting District Director*, dated November 1, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of this appeal, counsel submits a brief, dated December 27, 2005; a report from a licensed marriage and family therapist/psychotherapist, dated November 23, 2005; a letter from a medical doctor regarding the applicant spouse's medical conditions, dated December 28, 2005; an affidavit from the applicant's spouse, a U.S. citizen, dated December 22, 2005; letters from two of the applicant's children; a list of the applicant spouse's relatives and their current U.S. immigration status; letters in support of the applicant; employment verification letter on behalf of the applicant; diplomas issued to the applicant's spouse; financial and tax documents for the applicant and her spouse; articles regarding Mexico's economy; Human Rights Practices Report for Mexico for 2003; excerpts from the CIA World Factbook on Mexico; Library of Congress Country Report for Mexico; newspaper clippings regarding Mexico's economy from a Mexican newspaper; and various photographs of the applicant and her family. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 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 a 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 the applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

To begin, counsel asserts and documents that the applicant's spouse suffers from a number of medical conditions [REDACTED], Sunset Community Health Center, Inc., in a letter dated December 28, 2005, states that he has been the applicant spouse's personal physician since December 2003, and confirms that the applicant's spouse "...has really bad diabetes which is uncontrolled with end organ damage invading retinopathy and neuropathy." *Letter from* [REDACTED] dated December 28, 2005. [REDACTED]

[REDACTED] another physician at Sunset Community Health Center, Inc., in a letter dated August 8, 2005, confirms that the applicant's spouse has been "...diagnosed with the following: Diabetes Mellitus with Proteinuria, Hypertension, and Bilateral Carpal Tunnel Syndrome..." *Letter from* [REDACTED] dated August 8, 2005.

No evidence has been provided that details exactly what assistance the applicant's spouse needs from the applicant and what hardship the applicant's spouse would face without the applicant to assist him. The applicant's spouse mentions that the applicant reminds him to take his medication and encourages him to take care of himself. While the applicant's spouse may need to make other arrangements with respect to his care, counsel has not established that any new arrangement would cause extreme hardship to the applicant's spouse.

Moreover, pursuant to the supporting documentation provided with counsel's brief, the applicant's spouse has a parent and six siblings that reside in the same city where he lives; counsel does not provide evidence that explains why the applicant spouse's relatives would not be able to assist the applicant's spouse due to his

documented medical conditions, should the need arise. Finally, the applicant's spouse has been employed since graduating from high school in 1990; he has held jobs in construction, office management, and is currently employed at Auto Zone; his medical conditions clearly do not hinder his ability to work and support his family. *Affidavit from* [REDACTED] dated December 22, 2005.

Counsel has provided a report prepared by [REDACTED] Licensed Marriage and Family Therapist/Psychotherapist, based on a consultation that [REDACTED] had with the applicant's spouse on November 17, 2005. [REDACTED] states that the "...pending forced departure of [the applicant] would and has cause[d] [REDACTED] [the applicant's spouse] extreme physical, mental and emotional trauma. The emotional and mental strain of the immigration proceedings have aggravated [REDACTED]'s diabetic condition. [REDACTED] relies heavily on his wife to maintain his dietary requirements of his diabetic condition. The stress and anxiety levels of losing his wife, due to the possibility of her being deported has caused additional worry and anxiety that has generated into post traumatic stress reaction." *Report from* [REDACTED], dated November 23, 2005.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychotherapist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the post traumatic stress reaction suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychotherapist, thereby rendering the psychotherapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's spouse states that he will suffer extreme hardship as a result of relocating to Mexico to reside with the applicant. He states that if he were to accompany his wife to Mexico "...I would have to renounce my United States citizenship to become a citizen of Mexico and there is no way in the world I would ever do that. To be able to work and function in Mexico you have to be a Mexican citizen which I am not and there is no way I would be able to support my wife and children with the wages they have in Mexico." *Supra* at 1. No documentation has been provided to corroborate the applicant's spouse's statement that becoming a Mexican citizen is the only way to work and function in Mexico, nor has any evidence been provided to document that to become a Mexican citizen, one must renounce U.S. citizenship. 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)).

Counsel further contends that the applicant's spouse maintains employment in the United States and is the principal breadwinner, as the applicant is employed on a part-time basis. The information provided by counsel with respect to Mexico's employment and country conditions is very general in nature. It has not been established that the applicant's spouse would be unable to find any employment or that the employment situation in Mexico will cause extreme hardship to him, financially, emotionally or psychologically.

The applicant's spouse also contends that relocating to Mexico would be "...basically sentencing me to death....I do not qualify for any medical services in Mexico and I could not afford private care." *Supra* at 2. It has not been established that the applicant's medical situation will worsen to a greater degree while in Mexico, such as documentation from medical experts in the field, confirming that the applicant spouse's medical conditions cannot be treated properly in Mexico. Counsel asserts that post traumatic stress disorder can only be treated in the United States. *Brief in Support of Waiver*, dated December 27, 2005. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It has also not been established that the applicant and/or her spouse will be unable to obtain health care coverage.

Counsel states that were the applicant to depart the United States, the applicant's spouse would suffer as he needs the applicant to help care for their children. *Brief in Support of Waiver*, at 5. Counsel provides no evidence of what costs would be involved, to bolster the assertion that the financial issues inherent to the applicant's departure are of an extreme nature. Moreover, counsel provides no explanation as to why the applicant would be unable to be employed in Mexico, thereby assisting the applicant's spouse financially in obtaining care for the children and maintaining two households.

The applicant's spouse explains that the applicant's oldest child, who the applicant spouse is raising as his own, was raped and molested while in Mexico and that the applicant is fearful for her and her children's lives. Pursuant to the applicant spouse's statement, the child has been through a great deal of emotional problems and has been in counseling. *Letter from [REDACTED]* at 1. Information is also provided that the applicant spouse's other child suffers from asthma. While the applicant's spouse may need to make other arrangements with respect to the children's continued care, children are not qualifying relatives for purposes of an inadmissibility waiver and counsel has not established that any new arrangements for the psychological, emotional and financial care of the children would cause extreme hardship to the applicant's spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.