



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: JUN 19 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on December 22, 2004. The matter is now before the AAO on a motion to reopen. The motion will be granted. The December 22, 2004, AAO Order dismissing the appeal will be affirmed, and the application will be denied.

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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. lawful permanent resident, and she seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined that the applicant had failed to establish that her husband would suffer extreme hardship if the applicant were denied admission into the United States. The application was denied accordingly. On appeal, the applicant asserted that her entire family is in the United States and that she, her husband and her family would suffer emotional hardship if she were required to return to Mexico. The AAO noted, in a decision dated December 22, 2004, that only the applicant's husband was a qualifying relative for section 212(i) of the Act purposes, and that hardship to the applicant and her children could thus not be considered for purposes of a section 212(i) of the Act waiver of inadmissibility. The AAO concluded that the evidence contained in the record failed to establish that the applicant's husband would suffer extreme hardship if the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) were denied. Accordingly, the AAO affirmed the district director's decision and dismissed the applicant's appeal.

In a motion to reopen, the applicant submits, through counsel, a copy of an apartment lease, and a new affidavit from her husband, [REDACTED]. The applicant then asserts, through counsel, that she did not present sufficient evidence of [REDACTED]'s hardship in her previous appeal due to ineffective assistance from a "notario." The applicant indicates, on this basis, that she is entitled to file a new appeal with the AAO. The applicant indicates further that a delay in filing the present motion to reopen was reasonable and beyond her control as set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) and *Matter of Grijalva-Barrera*, 22 I&N Dec. 472 (BIA 1996) (in which the Board of Immigration Appeals holds that ineffective assistance of counsel can be an exceptional circumstance that detrimentally affects a client such that the immigration proceeding consequences should be excused.)

Regarding counsels assertions of ineffective assistance of prior counsel, the AAO notes that by granting this motion, the applicant has been afforded the opportunity to provide additional evidence in support of her claim of extreme hardship to her spouse. However, as discussed below, the new evidence is insufficient to overcome the previous decisions.

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

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 evidence in the record reflects that in 1995 the applicant attempted to gain admission into the United States by presenting a fraudulent entry document. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 applicant's husband is a U.S. lawful permanent resident. The applicant is thus eligible to apply for relief under section 212(i) of the Act.¹

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

In her motion to reopen, the applicant submits a copy of the couple's apartment lease. The applicant also submits an affidavit written by her husband indicating that he and the applicant married in Mexico in 1969, and that all of their, now grown, children were born in Mexico, but now live in the United States with their families. [REDACTED] indicates that he lived in Mexico until immigrating to the United States as a lawful permanent resident on November 1, 2001. [REDACTED] indicates further that he supports his wife and youngest child financially in the United States, and that he and his wife have built a life for themselves in the United States. [REDACTED] indicates that he would miss the applicant if he were separated from her, and that he would miss his life and family in the U.S. if he moved to Mexico with the applicant. In addition to [REDACTED]'s affidavit, the record contains previously submitted: copies of utility bills; a copy of the applicant's apartment lease; family photos;

¹ As previously noted, neither the applicant nor her children are qualifying family members for section 212(i) of the Act purposes.

copies of their children's Mexican birth certificates; U.S. citizenship status documents for one son; and U.S. lawful permanent resident status documents for two of the applicant's other children.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her husband would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States, and her husband moved with her to Mexico. The affidavit evidence submitted on motion reflects that [REDACTED] would not face difficulties adjusting to a new culture in Mexico as he was born in Mexico and spent his entire life there until moving to the United States in November 2001. Moreover, the AAO notes that the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship. The U.S. Supreme Court held further in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." Furthermore, the AAO notes that the Board found in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) that distress from being unable to reside close to family in the United States is not the type of hardship that is considered extreme.

The AAO finds that the applicant also failed to establish that her husband would suffer extreme hardship if she were denied admission into the United States and her husband remained in the U.S. without her. [REDACTED] affidavit, and the apartment lease and utility bill evidence contained in the record fail to establish financial hardship to [REDACTED] and the record contains no other evidence to indicate or establish that the applicant's husband would suffer extreme financial hardship if the applicant were denied admission into the United States. The record additionally lacks evidence to establish that [REDACTED] would suffer emotional hardship beyond that commonly associated with removal or inadmissibility if the applicant were denied admission into the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that her husband would suffer extreme hardship if she is denied admission into the United States. The December 22, 2004, AAO Order dismissing the applicant's appeal will therefore be affirmed, and the application will be denied.

ORDER: December 22, 2004, AAO Order dismissing the applicant's appeal is affirmed. The application is denied.