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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: PHOENIX, ARIZONA

Date: MAR 06 2007

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Phoenix, Arizona, 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 record reflects that the applicant presented a fraudulent document to a U.S. consular official in 1996 in an attempt to obtain a visitor's visa in order to enter the United States. The applicant is therefore 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), and she seeks a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that her inadmissibility would cause extreme hardship to her U.S. citizen husband; thus, he denied the waiver application. Counsel indicated on the Notice of Appeal Form I-290B that she would submit a brief or additional evidence within 30 days; however, as of this date the AAO has not received any additional evidence. Thus, the record is complete. The AAO has considered the entire record in rendering this decision.

On appeal, counsel asserts that the district director failed to consider all the evidence, and failed to consider all the hardship factors in the aggregate. Counsel also contends that the applicant's misrepresentation should not count against her, because she was never convicted of any crime nor did she admit to committing any crime. The AAO notes that the applicant herself admitted to the U.S. consular officer that she had procured a false document in order to qualify for a U.S. visa. There is no requirement that she be convicted of or admit to the elements of any crime in order to be found inadmissible pursuant to § 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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.
- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (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 U.S. citizen or lawfully resident spouse or parent. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez*, *supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In her brief in support of the waiver application, counsel notes that the Ninth Circuit Court of Appeals in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) has held that family separation due to deportation is not a personal choice and that considerable weight must be given to the hardship that will result from such separation. As the present case arises within the jurisdiction of the Ninth Circuit, separation of family will be given the appropriate weight under the Ninth Circuit law in the assessment of hardship factors. The AAO now turns to a consideration of the record.

The applicant's qualifying relative is her U.S. citizen spouse. As he is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that her husband would experience extreme hardship whether he resides in the United States or in Mexico.

Counsel's brief at the time of filing contends that the applicant's husband would suffer extreme hardship if he is separated from the applicant, because he would suffer emotionally and financially. Counsel states that the applicant's husband would be forced to sell their home without the "steady financial support" of the applicant. The applicant has, however, submitted no evidence to support counsel's claims. There is no documentation in the record of the applicant's contribution to her family's finances, nor any information on the financial responsibilities faced by the applicant and her husband. Neither is there any psychological or medical report related to the emotional state of the applicant's spouse. Accordingly, the record does not establish that he would suffer psychologically or financially to a greater extent than other spouses of persons who are removed. Without supporting documentation, the assertions of counsel are not sufficient to meet the applicant's burden of proof in these proceedings. The 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).

The AAO notes that the statement submitted by the applicant's spouse in support of the waiver application indicates that he suffers from arthritis in his knees, high blood pressure, Type II diabetes and contact dermatitis. In his brief, counsel contends that the applicant's spouse would suffer hardship because of these medical

conditions if he did not have the companionship of the applicant. The record, however, as previously indicated includes no medical or psychological evaluation of the applicant's spouse that establishes how his separation from the applicant would affect his mental or physical health. Therefore, the record does not establish that the applicant's husband would suffer extreme hardship if he remained in the United States while she returned to Mexico.

Counsel also asserts that the applicant's husband would also suffer extreme hardship if he chooses to relocate to Mexico with the applicant. Counsel points out that the applicant's husband's family lives in the United States and that he has no ties with Mexico, other than through the applicant. Again, however, it is noted that there is no evidence on the record to the effect that the applicant's husband's psychological suffering would be greater than that of other individuals who relocate abroad to accompany a spouse. Counsel stresses the negative impact of Mexico's high crime rate and weak economy, but the generalized country conditions information provided by the discussion of Mexico in the *Country Reports on Human Rights Practices – 2004* (Department of State, February 28, 2005) does not establish that the applicant's husband would be at risk of personal harm in Mexico or that he would be unable to find employment. Counsel also contends that, should he move to Mexico, the applicant's spouse would lose the medical insurance that now provides for his medical care and medicine. However, while the record contains copies of a number of prescriptions issued to the applicant's spouse, it provides no report from a licensed medical practitioner confirming the nature of the health problems that he says affect him or the type of treatment he requires, nor any indication of the costs associated with his medical conditions. The record also fails to identify the health problems for which the identified medicines have been prescribed, including whether they represent the level of medication consistently required to manage the health conditions identified by the applicant's spouse. Without this information, the AAO is unable to conclude that the relocation of the applicant's spouse to Mexico and the loss of his employment-based insurance would impose an extreme financial hardship on him.

The AAO acknowledges that the applicant's husband faces difficult choices and challenges as a result of the applicant's inadmissibility; however, the record fails to show that he would suffer hardship beyond the normal economic and social disruptions involved in the removal of a family member. In *Hassan v. INS*, 927 F.2d 465 (9<sup>th</sup> Cir. 1991), the Ninth Circuit Court of Appeals stated that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

As the record does not establish that the applicant's husband would experience extreme hardship as a result of her removal from the United States, 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 § 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.