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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date: MAR 08 2007

IN RE:



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:

SELF-REPRESENTED

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, 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 was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 28, 2005.

The AAO notes that on February 1, 2007 counsel withdrew himself from representing the applicant on appeal. Although the applicant's former counsel provided the name of the applicant's new counsel, the AAO notes that a Form G-28 has not been submitted.

On appeal, former counsel contended that Citizenship and Immigration Services (CIS) erred in finding the applicant inadmissible. Former counsel also found that the Director erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act, in that he did not consider extreme hardship to her U.S. citizen child and he failed to balance the positive and negative factors in this case. *Form I-290B*, dated November 4, 2004.

In support of these assertions the record includes, but is not limited to, an affidavit from the applicant's spouse; a Record of Sworn Statement by the applicant; an employment letter for the applicant's spouse; and tax statements for the applicant and her spouse. 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.

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.

The record reflects that on September 22, 2004 the applicant in testimony before an Immigration Officer admitted to previously using an illegal document to gain admission into the United States. *Record of Sworn Statement*, dated September 22, 2004. Based on the record, the AAO finds that the applicant knowingly procured a fraudulent document to enter the United States and that she is therefore inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The AAO acknowledges the statement of former counsel that extreme hardship to the applicant's U.S. citizen child should be considered. However, the plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship to be considered in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's child is only considered as it would affect the applicant's spouse. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A for the applicant's spouse*. The applicant's spouse no longer has family in Mexico, nor does the applicant. *Affidavit from the applicant's spouse*, dated December 4, 2004. The applicant's spouse stated that his child would not have the same educational opportunities in Mexico, nor would he be able to receive comparable medical care. *Id.* The AAO notes that the applicant's child is not a qualifying relative in this particular case, and the record makes no mention that the applicant's child is suffering from a significant health condition that directly affects the applicant's spouse. The applicant's spouse earns approximately \$2400 a month. *Id.*; *See also tax statements for the applicant and her spouse*. While the applicant's spouse does not address how he would be affected financially if he went to Mexico, there is nothing in the record to demonstrate that the applicant or her spouse would be unable to sustain themselves and contribute to their family's financial well-being from a

location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse would suffer extreme hardship. The mother of the applicant's spouse and his five siblings live in the United States. *Affidavit from the applicant's spouse*, dated December 4, 2004. The applicant's spouse stated that his income alone is not enough to pay for his mortgage, gas, water, electricity, and food expenses. *Id.* As previously noted, there is nothing in the record to demonstrate that the applicant would be unable to contribute to her family's financial well-being from a location outside of the United States. The applicant and her spouse have been married since January 13, 2001. *See marriage certificate.* The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, the record does not indicate that his situation, if he remains in the United States, would be different than that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.