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MAR 16 2007

FILE:

Office: LOS ANGELES, CA

Date:

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, Los Angeles, CA, 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 (U.S.) 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 admission into the United States by fraud or willful misrepresentation on August 29, 1996. The applicant is married to a U.S. citizen and has two U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavits of the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated May 3, 2005.

On appeal, the applicant states that the Service did not consider the true hardships to the applicant's wife and children. He states that he proved that his family would be left without any financial support and be subject to extreme psychological problems. The applicant also asserts that the Service relied upon the exceptional and extremely unusual hardship standard used in cancellation of removal when adjudicating his waiver application. *Form I-290B*, dated May 13, 2005.

The AAO notes that the applicant indicated on his Form I-290B that he would be submitting a brief and/or evidence to the AAO within 30 days. As of the present time, no brief and/or evidence has been submitted to the AAO. The current record is considered the complete record and will be considered in its entirety while reviewing this application.

The record indicates that on August 29, 1996 the applicant presented a photo-substituted Mexican passport with a temporary lawful resident stamp in the name of "[REDACTED]" in an attempt to gain entry into the United States.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences or his children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse.

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 section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she 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.

In her statement, dated February 8, 2005, the applicant's spouse explains the hardship she and her children would suffer as a result of the applicant's inadmissibility. She states that she and the applicant have three U.S. citizen daughters: a one year old, a three year old and a five year old. She states that her children speak

English as their primary language. The applicant's spouse states that her children have never been to Mexico and would not be able to adjust to life in Mexico. She expresses concern that medical treatment would not be available to her children in Mexico, noting that her oldest child may require surgery. The applicant's spouse also indicates that the applicant would be unable to find employment. She states that her children would lose many educational opportunities if they relocated to Mexico. The record does not contain documentation to support these concerns nor does the record make the connection between the children's hardship and the hardship to the applicant's spouse. In addition, the applicant's spouse asserts that if the applicant is required to return to Mexico, she and the children would remain in the United States. The AAO finds, that based on the current record, the applicant has not shown that she would suffer extreme hardship as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she remains in the United States. In her statement, the applicant's spouse states that the psychological impact of the applicant's inadmissibility on her and her children would be immense. She states that they are a very close family and the applicant is an excellent father. The applicant's spouse did not provide any details about the emotional suffering she is experiencing or any documentation supporting her statements. The applicant's spouse also states that the applicant is employed with Easy Auto Paint and Body, Inc. and earns \$14.50 per hour. The record contains a letter from the applicant's employer, dated January 25, 2005, which supports her statement regarding the applicant's employment. The record also includes five letters, all dated January 22, 2005, from the applicant's mother-in-law, three sisters-in-law and three brothers. These letters state that the applicant's spouse relies on the financial support of the applicant to support herself and her children. The letters also state that each family member is not in the position to help the applicant's spouse financially if the applicant is removed from the United States. The AAO notes that the record does not contain any documentation showing why the applicant's spouse cannot work to support her children. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 removed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *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.