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FILE:

Office: CHICAGO, ILLINOIS

Date: MAR 27 2007

IN RE

APPLICATIONS: 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by using an altered passport. The record indicates that the applicant is the daughter of lawful permanent residents and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident parents and siblings.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's lawful permanent resident parents and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 16, 2004.

On appeal, the applicant, through counsel, claims the District Director erred in failing to find extreme hardship on the applicant's parents should the applicant be removed from the United States. The applicant's "entire family lives in the United States as either citizens or lawful permanent residents. The aggregate of the factors clearly meets the definition of extreme hardship." *Form I-290B*, filed August 18, 2004.

The record includes, but is not limited to, counsel's brief, affidavits by the applicant's mother and father, and birth records and immigration documents for the applicant's siblings. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (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...

The AAO notes that the record contains several references to the hardship that the applicant's siblings would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident siblings. In the present case, the applicant's parents are the only qualifying relatives, and hardship to the applicant's siblings will not be considered, except as it may cause hardship to the applicant's parents.

In the present application, the record indicates that on October 2, 1991, the applicant's father, [REDACTED] filed a Form I-130 for the applicant, which was approved on November 18, 1991. On January 22, 1996, the applicant attempted to enter the United States as a B2 visitor, at the Brownsville, Texas, Port of Entry, by presenting a photo altered Mexican passport, under the name [REDACTED]. The applicant was voluntarily removed to Mexico. In August 1997, the applicant entered the United States without inspection. On November 30, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 29, 2003, the applicant filed a Form I-601. On July 16, 2004, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her lawful permanent resident parents.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident parents. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts the applicant's parents would face extreme hardship if the applicant were denied admission into the United States. The applicant's parents claim that if the applicant were removed from the United States, their family "would have a great deal of hardship and difficulty in going without her here in the United States. [They] have all [their] family here in this country and [they] are a very close-knit family." *Affidavits of [REDACTED] and [REDACTED]* dated October 13, 2003. The applicant's parents state they "have no family nor home in Mexico." *Id.* The applicant's parents state "[i]t is unthinkable and it would be very

difficult for [the applicant] to live apart from all [her] family and live in another environment because all [their] family sees the United States as [their] home.” *Id.* The AAO notes that the applicant is a native and citizen of Mexico who spent all her formative years in Mexico and presumably speaks Spanish. Counsel states the applicant’s “income contributes to the household.” *Brief attached to Form I-290B*, filed August 18, 2004. However, the applicant’s parents did not mention that the applicant provides any financial support to the household and there was no documentation submitted establishing that the applicant contributes financially to her parents. Additionally, no evidence was provided that the applicant could not obtain a job in Mexico that would support herself. The AAO notes that the applicant’s parent’s affidavits focused primarily on the applicant and the extreme hardship she would suffer if she is removed from the United States; however, the applicant’s hardship is irrelevant for a waiver under section 212(i) of the Act. The applicant’s parent’s statements regarding the extreme hardship they would suffer if the applicant were not allowed to enter the United States were vague and not supported by documentation. The AAO finds that the applicant failed to demonstrate how her parents would suffer any extreme hardship if the applicant were removed to Mexico.

Counsel does not establish extreme hardship to the applicant’s lawful permanent resident parents if they remain in the United States or if they join her in Mexico. The AAO notes that the applicant made no claim that her parents, also natives of Mexico, would suffer any hardship if they joined the applicant in Mexico. They claim they have no family or home in Mexico; however, they are from Mexico. The AAO, therefore, finds the applicant has failed to establish extreme hardship to her parents if they accompany her to Mexico.

As lawful permanent residents, the applicant’s parents are not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s parents face the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant’s situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s parents will endure hardship as a result of separation from the applicant. However, their situation if they remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States 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,

in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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 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.