



U.S. Citizenship
and Immigration
Services

H2

identifying & red to
prevent clear, unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date:

MAY 23 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for procuring admission to the United States by fraud or willful misrepresentation. She is the recipient of an approved I-130 petition filed on her behalf by her U.S. citizen daughter. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) based on the hardship her mother, [REDACTED], a Lawful Permanent Resident (LPR), would suffer if the applicant were not permitted to reside in the United States.

The District Director concluded that the applicant had failed to submit the required evidence as requested by the Service (U.S. Citizenship and Immigration Services (CIS)) and had failed to establish that extreme hardship would be imposed on her qualifying relative, her LPR mother. The District Director accordingly denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *District Director's Decision*, dated March 3, 2005.

On appeal, counsel for the applicant asserts that CIS erroneously denied the applicant's request for a waiver of inadmissibility because she had provided a timely response to CIS's Request for Evidence, and her departure from the United States would result in extreme hardship to her mother. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed April 1, 2005 with a Statement in Support of Appeal (Statement by Counsel).

Attachments to the above referenced Statement by Counsel include (1) proof of LPR status or U.S. citizenship for the applicant's mother and ten additional immediate family members and other relatives; (2) the applicant's sworn declaration, dated March 29, 2005, that she provided a notary, [REDACTED] with all the documents requested by CIS, and [REDACTED] sent them to CIS; (3) a sworn declaration by the applicant's mother, dated March 29, 2005, listing the hardships she would suffer if her daughter's waiver were not approved, noting that she has lived continuously in the United States since 1975, she is 75 years old and being treated for severe arthritis that limits motion in her limbs, and that the applicant has cared for her for many years and supports her financially and emotionally, driving her to doctor's appointments and ensuring she takes her medication; that she lives in the applicant's house and that the applicant takes care of all the household expenses including the mortgage, that her entire family is in the United States, and that she would not be able to obtain appropriate medical care in Mexico; she concludes that if the applicant is not allowed to remain in the United States, she will lose the one person who takes care of her and provides her with the loving and supportive environment that she needs; (4) a note from a doctor, dated March 24, 2005, confirming that the applicant's mother was diagnosed with "Ortho Arthritis 715.90 and Bursitis 7273" and as a result of her arthritis, she is "limited to do the work around the house and she must have somebody to help her at home."; and (5) a letter from an employer, dated March 28, 2005, stating that the applicant has been employed for the past 3 years and is currently earning \$8.50 an hour as a machine operator.

Counsel asserts that the above documents had been previously submitted to CIS as requested and asks that the appeal be treated as a motion to reopen. Title 8, U.S. Code of Federal Regulations (8 C.F.R.) provides that the official having jurisdiction, in this case the District Director, may reopen the proceedings for proper cause shown. 8 C.F.R. § 103.5(a). The District Director declined to treat the appeal as a motion and forwarded the matter to the AAO. The AAO notes that there is no evidence to support counsel's claim that the documents submitted on appeal were previously submitted. There is no confirmation from the notary that she submitted any documents. Moreover, all of the statements submitted were dated some time in March 2005, after the District Director's Decision, *supra*.

The record also includes documents submitted in support of the applicant's request for adjustment of status and for a waiver of inadmissibility. These include, but are not limited to (1) a statement from the applicant, that she entered the United States with her three children, aged 4, 3, and 2, in 1976; she returned to Mexico briefly the next year without them and was caught and sent back to Mexico when she tried to return to the United States that same year, and she has been residing in the United States since then; (2) an Affidavit of Support (Form I-864), signed in March 2001, indicating that the applicant was sponsored by her daughter assisted by household member [redacted] grandfather; the form indicated that they, the applicant and five other family members resided together at [redacted] it also showed that the sponsor was a student and unemployed and that in the most recent tax year, 2000, [redacted] income was \$22,560, and the applicant's income was \$8,564; (3) tax returns for 2000 for the applicant showing her income as \$8,564 and listing two children as dependents; and for [redacted] and his spouse [redacted] showing a joint income of \$22,560; (4) a letter from his employer, dated February 26, 2001, verifying that [redacted] has been employed by Continental Forge Company as a press operator since April 27, 1983 and earned \$11 per hour; (5) a letter from a mortgage company addressed to three mortgage holders at [redacted] [redacted] [sic], [redacted] and [redacted] [sic].” The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) of the Act provides:

(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 the applicant used a false identification document for entry into the United States in 1977. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. The applicant does not contest this finding.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's LPR mother is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The record indicates that the applicant was born in Mexico in 1955 and entered the United States in 1977; her mother was born in Mexico in 1929 and has been a lawful permanent resident of the United States since 1988. She is listed on income tax forms as the spouse of [REDACTED] though no information regarding their

marriage is included in the record. Based on information in the applicant's I-864, *supra*, the applicant, her mother, [REDACTED] and at least four other family members reside together; based on tax information for the most recent year provided, [REDACTED] supported the applicant's mother and provided additional support for the household; he is included on the mortgage. The applicant's mother is 77 years old; the applicant is 52; they have at least eleven close family members who are U.S. citizens or LPRs residing in close proximity in California. The applicant's mother states that she has no close family remaining in Mexico and that she has resided in the United States since 1975. She also states that if the applicant is not allowed to remain in the United States, she will lose the one person who takes care of her and provides her with the loving and supportive environment that she needs, and that the applicant is the one person who takes care of her and takes care of all the household expenses including the mortgage.

Upon review, the applicant has established that her mother would suffer extreme hardship if she chose to accompany the applicant to Mexico, given her mother's long term and extensive ties to the United States, the fact that her close family members reside with her or near her and she has no significant ties to Mexico, her advanced age and medical problems. However, the applicant has not established that her mother will experience extreme hardship if her mother remains in the United States separated from the applicant.

The AAO recognizes that the applicant's mother will endure emotional hardship as a result of separation from the applicant should she choose to remain in the United States. However, her mother's claims that she will suffer financially are not supported by the record. The record indicates that it is not the applicant's income, but rather the income of her mother's spouse that is the main support of the household. Tax returns for 2000, the most recent in the record, indicate that the applicant earned \$8,564 and was responsible for two dependent children. Her statement that the applicant takes care of all the household expenses is not persuasive. Neither are her statements that she will have no one to care for her in her daughter's absence. The record indicates that the applicant's mother lives in a household with numerous other adult family members and her husband, who has earned a living wage for many years and is on the mortgage of their residence. The statements of the applicant's mother, without further supporting evidence, do not satisfy the applicant's burden of proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the record, the applicant's mother will suffer from separation from a daughter whom she clearly loves and depends on emotionally and whose company she has enjoyed for many years. However, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's mother should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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.