

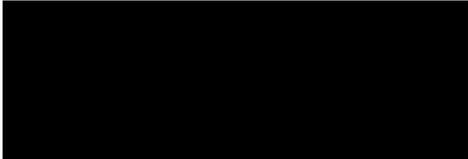
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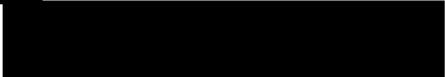
FILE:

Office: SAN FRANCISCO, CA

Date:

NOV 30 2007

IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The record indicates that on or about April 1993, the applicant entered the United States with a fraudulent alien permanent resident card (Form I-551). The applicant is married to a 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 his U.S. citizen spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 24, 2002.

In support of this appeal, counsel<sup>1</sup> submits a letter in support of the appeal, dated October 23, 2002; a letter from a school psychologist with respect to the applicant's spouse, dated October 11, 2002; and two psycho-educational assessments and an individual education plan relating to the applicant's 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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

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<sup>1</sup> The applicant appears to be represented; however the record does not contain a properly signed Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

This matter arises in the San Francisco 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). *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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In support of the waiver, the applicant's spouse, 17 years old at the time the appeal was filed, asserts that she will suffer emotional and psychological hardship were the applicant removed. As stated by [REDACTED] "...My husband takes care of me very well. We love each other very much. If he were deported to Mexico, I don't know what we would do. It would be extremely devastating for all of us...I know that I would have a panic attack if I knew that I was going to lose him..." *Affidavit from* [REDACTED] dated March 5, 2002.

In addition, the applicant's spouse states that she would suffer financial hardship were the applicant removed from the United States. As [REDACTED] "...I would never be able to support [REDACTED] [the applicant's child] and myself without [REDACTED]. I depend on him to help with the financial needs of our family. I love [REDACTED] and know that I can't live without him. I need his help with my home school that I will be doing in the near future. I have no way to pay for this schooling online without him. I can't take a full time job, raise our daughter and do home school too. I am only seventeen and need to have a high school diploma so that I can go on to culinary school..." *Id.* at 2.

To support the applicant's spouse's dependence on the applicant for financial, emotional and psychological support, the record indicates that the applicant has been working in the construction industry since 1996, thereby assisting in financially supporting his spouse and child. In addition, the applicant's spouse does not appear to have a dependable parental support network; as documented in an Addendum to Individual Educational Program, dated January 26, 2000, the special education teacher confirmed that the applicant's spouse's mother and father were in jail, and that the applicant's spouse's "...home situation is in turmoil..." *Addendum to Individual Educational Program*, dated January 26, 2000.

To further support the applicant's hardship contentions, counsel provides evidence that the applicant's spouse suffers from a serious learning disability. As outlined by [REDACTED] School Psychologist, Sonoma Valley Unified School District,

[REDACTED] [the applicant's spouse] was a student in the Sonoma Valley Unified School District in Sonoma, California, throughout elementary, middle school and part of high school.

[REDACTED] was initially assessed for special education eligibility in October 1991 (first grade because of concerns about her academic skills[)...She was found to be eligible for special education services and was placed in a special day class special education program at that time. In 1995 she was reassessed after having received special education services since her initial placement. Language and visual processing deficits continued to be indicated and she continued to receive special education support.

[REDACTED] continued to receive special education services throughout middle school and into high school. She continued in special education through the 2000-2001 school year. [REDACTED] did not re-enroll in school for the 2001-2001 school year.

I have recently completed assessment with [REDACTED] at her request (October 8, 2002). Assessments indicate that [REDACTED] exhibits visual processing, language and cognitive delays with significantly impact her academic performance. Extensive academic testing completed in October, 1998 revealed reading skills to be at a first grade level, written language skills at kindergarten/first grade level and math skills at a second grade level. Current academic testing indicates that [REDACTED] reading skills continue to be at a first grade level. Spelling/written language is also at a first grade level. Math calculation skills are at a third grade level.

Letter from [REDACTED], School Psychologist, Sonoma Valley Unified School District, dated October 11, 2002.

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if she and the child remained in the United States while the applicant returned to Mexico. Due to the extraordinary demands placed upon the family as a whole due to the applicant's spouse's learning disability and due to the applicant's spouse's financial, emotional and psychological dependence on the applicant, it would be extreme hardship for the applicant's spouse to be required to assume the role of primary caregiver and breadwinner to a young child, without the continued emotional, physical, financial and psychological support of the applicant. In addition, due to the young age of the child, the applicant's spouse would need to obtain a childcare provider who could provide the constant monitoring, supervision and academic support the child would require while the applicant works outside the home and continues her education, a costly proposition for the applicant's spouse. The applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse. As such, were the applicant removed, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse states that if she relocated to Mexico with the applicant, "...I would lose the support of my extended family and of all of my friends that I rely on in our community. To leave now would be to lose everything we've worked and prayed for..." *Supra* at 2. No corroborating evidence has been provided to establish that a separation from her extended family would cause the applicant's spouse extreme hardship. 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)). In addition, counsel has failed to document that the applicant's spouse's learning disabilities would worsen in Mexico to an extent that would cause extreme hardship to the applicant's spouse. Finally, counsel has failed to establish that the applicant's spouse would be unable to find gainful employment in his profession were he to relocate, thereby ensuring that the applicant's spouse is able to continue her schooling while residing in Mexico.

As such, although the AAO has determined that the applicant's spouse would experience extreme hardship if the applicant were removed, the applicant has not established that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to reside with the applicant. In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties

alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, 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 section 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.