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FILE:

Office: SAN FRANCISCO

Date: OCT 15 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), 8 U.S.C. section 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, 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 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 sought to procure a visa, other documentation, or admission into the United States or other benefit by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative Petition (Form I-130) filed by her Lawful Permanent Resident (LPR) spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her LPR spouse and U.S. citizen children.

The record reflects that the applicant was apprehended by an officer of the Legacy Immigration and Naturalization Service (INS) on January 23, 1998. She presented another person's I-551 Resident Alien Card as her own. The applicant was granted voluntary departure to Mexico, but returned to the United States without inspection several days later. The applicant and her husband, [REDACTED] were married in the United States on February 29, 1992. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on November 1, 1994. The petition was approved on December 8, 1994. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) in July 2003 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) in July 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated November 16, 2004.

In a brief submitted on appeal, counsel contends that the district director misstated facts and failed to consider evidence regarding the brain tumor and surgery of the applicant's son. *Brief of Counsel*, dated December 13, 2004. Counsel maintains that the applicant entered the United States without inspection in January 1998 after taking her son Marco to see a doctor in Mexico. *Id.* Counsel asserts that once inside the United States, the applicant was given a false "green card" by her smuggler, and she had this card in her possession when she was later detained on a bus at the San Clemente, California border stop, some 66 miles from the U.S. border with Mexico. *Id.* Counsel also contends that contrary to the assertions of the district director, the applicant has submitted significant evidence of Marco's medical condition. *Id.*

Counsel summarizes the evidence of hardship submitted by the applicant and contends that it is sufficient to meet the applicant's burden of proof. *Brief of Counsel*, dated December 13, 2004. Counsel notes the following hardship factors:

1. If he left the United States, the applicant's spouse would lose his lawful permanent resident status.
2. The applicant's spouse is the sole provider for three families, and his income is "roughly 6-10 times that of the average Mexican" worker. Without the applicant to assist in taking care of the couple's children, he would be unable to work full-time, would lose his home, and he and his entire family would suffer financial hardship.

3. The applicant's spouse would suffer emotionally at the loss of the applicant's "companionship, homemaking, and care of himself and their children."

*Id.*

The record includes a declaration from the applicant's spouse; articles concerning economic, health and educational conditions in Mexico; medical records and other documentation regarding the medical condition of the applicant's son Marco; tax and employment records for the applicant and her spouse; and title and mortgage documents for the applicant and her spouse. The entire record was considered in rendering a decision on the appeal.

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.

A Form I-213 Record of Deportable/Inadmissible Alien in the record reflects that the applicant was apprehended by an officer of the Immigration and Naturalization Service (INS) on January 23, 1998 while on a bus en route to Los Angeles, California. She presented the I-551 Resident Alien Card of an individual named Yen Ngoy and claimed to be that person. The Form I-213 indicates that applicant later revealed to the officer that the card was not hers, and that she had presented "the I-551 of another person to the inspector at the Port of Entry in Calexico, California" the day before to gain admission to the United States. As stated above, counsel has asserted that the applicant was not inspected upon entry on January 22, 1998, but rather entered without inspection on that date and only presented a false I-551 card when apprehended inside the United States on January 23, 1998. Regardless, there is no dispute that the applicant presented another person's I-551 Resident Alien Card to an officer of the INS and thereby falsely represented herself as a legal permanent resident to avoid apprehension and removal from the United States. There is thus sufficient evidence to support a finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act 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 and her children is not relevant under the statute

and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse 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. *See Matter of Mendez-Moralez*, 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 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).

The Ninth Circuit Court of Appeals 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her declaration, the applicant states that if she returns to Mexico, her children will "have to stay" in the United States. She asserts that her children are integrated into American life and don't read or write Spanish well enough to adjust to school in Mexico. She contends that they will have difficulty adjusting to a lower standard of living and fewer educational opportunities in Mexico. She also contends that her son Marco would be unable to receive adequate medical treatment in Mexico.

The applicant maintains that in spite of her husband's yearly income of \$53,000 as a construction worker, it is difficult for them to meet their financial obligations. She contends that if she left the United States, there would be nobody to care for her children and her husband would no longer be able to work overtime to earn enough money to support the family. She asserts that even if the children returned with her to Mexico, her husband would be unable to send them enough money to support them there. She maintains that if her husband relocated to Mexico, they would lose everything they have in the United States and he would be forced to relinquish his LPR status.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological or emotional consequences would constitute extreme hardship when considered with other hardship factors. There is insufficient evidence showing that the hardship the applicant's spouse would experience if separated from the applicant would go beyond the common results of removal or inadmissibility. 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.

The AAO recognizes that, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

However, the applicant has submitted inadequate evidence showing that denial of the waiver application will result in financial hardship to her spouse if he stays in the United States. Beyond the applicant's assertions, there is scant evidence showing that the applicant will experience financial obligations resulting in economic hardship if the waiver application is denied. Although the statements by the applicant are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Likewise, there is insufficient evidence showing that the applicant will suffer extreme hardship if he relocates to Mexico. The AAO acknowledges the evidence submitted showing generally poor economic conditions in Mexico, and specifically that average wages in Mexico are considerably lower than in the United States. However, the applicant has failed to submit sufficient specific information demonstrating that her husband will be unable to find suitable employment in Mexico to support her and her children should he relocate there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse or parents as required under section 212(i) of the Act. 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(i) of the Act, the burden of proving eligibility rests 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.