

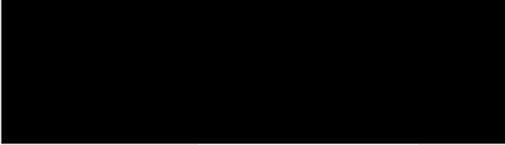
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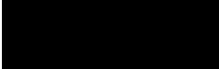
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: SEP 07 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, Los Angeles, 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant 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 U.S. citizen spouse.

The record reflects that the applicant made a false claim of U.S. citizenship in attempting to procure admission to the United States on December 25, 1990. The applicant returned to Mexico and was not placed in exclusion proceedings. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C)(i).

The applicant and her husband, [REDACTED], were married in the California on July 19, 2001. [REDACTED] a native of Mexico who became a naturalized U.S. citizen on June 22, 2000, filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on August 22, 2001. The petition was approved on May 15, 2002. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on May 29, 2002 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 1, 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 August 31, 2005.

On appeal, the applicant's husband asserts that various medical conditions—which he claims include diabetes, three herniated disks in his lower back, and diminished and deteriorating vision in his left eye—have incapacitated him to the extent that he cannot work or even “do simple tasks such as cook or take [his] diabetes medication without the aid of” the applicant. He contends that the applicant is “the only breadwinner” and that he would “lose his home, [his] means of transportation, and other living necessities” if she were removed from the United States.

The record contains several statements from the applicant's husband; a letter from [REDACTED] dated August 20, 1974 detailing injury to the applicant's left eye; a letter from [REDACTED] dated April 17, 1985 detailing injury to the applicant's lower back; a letter from [REDACTED] of the National Research Institute indicating that the applicant's husband has received treatment there for diabetes since 2003; medical test records for applicant's husband; documents detailing the pension and other benefits received by the applicant's husband from the [REDACTED]; a Social Security statement for the applicant's husband; copies of tax returns for the applicant and her husband for the period 1998 through 2002; utility bills and other financial records for the applicant and her husband; and employment records for the applicant. 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 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 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-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 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).

U. S. courts have 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.

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 husband faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The applicant's husband has asserted that he depends on the applicant's care and financial support because his medical problems have left him incapacitated and prevent him from working. However, the record contains no recent evidence detailing the nature of the applicant's husband's lower back and eye conditions and the impact these injuries have on his ability to work and otherwise function normally. The record shows that the applicant, who is retired, receives a pension and is not therefore wholly dependant on the applicant's financial support. Additionally, there is no evidence in the record showing the applicant's current income or demonstrating with specificity the nature and extent of any financial hardship the applicant's husband might experience should she be removed. Although the statements by the applicant's husband are relevant and have been taken into consideration, little weight can be afforded it 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)).

The AAO recognizes that the applicant's husband would suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, there is insufficient evidence showing that his situation is different from most individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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.

Finally, the applicant has not asserted, or submitted any specific evidence demonstrating, that her husband would suffer extreme hardship if he returned with her to Mexico.

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 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.