

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2



FILE:

Office: CIUDAD JUAREZ, MEXICO

Date: SEP 20 2007

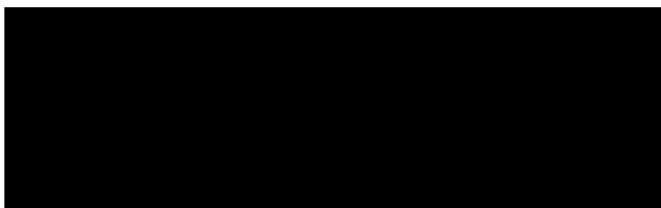
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 Officer in Charge, Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a citizen of Mexico, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant, therefore, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). In addition, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601).

The record indicates that counsel filed an appeal on September 1, 2005. On the Form I-290B, Notice of Appeal, counsel specified that a brief and/or evidence would be sent to the AAO within 30 days. On September 27, 2005, counsel states that a brief was being prepared "...but we have no copies of the record, including the waiver application and supporting documentation. Therefore, request is hereby made for a copy of the Consulate's record related to [REDACTED] [the applicant's] waiver application." *Letter from [REDACTED] dated September 27, 2005.* The most recent correspondence from counsel to the AAO is dated January 2, 2007, again requesting "...copies of the record necessary for the preparation of the brief in this matter." *Letter from [REDACTED] dated January 2, 2007.* The AAO has determined that counsel has had ample time to obtain any necessary documents with respect to the applicant's case as prescribed by the Freedom of Information Act (FOIA), as it has been almost two years since the Form I-601 denial. As such, the record is deemed to be complete.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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...

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant misrepresented himself at the time of the visitor visa application by stating that his intentions were to travel to the United States for vacation purposes, when in fact he intended to live in the United States permanently. In addition, upon obtaining the visa by misrepresenting his intentions, the applicant attempted to enter the United States in September 2003 with said visitor visa. The visa was subsequently cancelled when the port of entry officer learned that the applicant intended to reside in the United States permanently. The applicant is therefore inadmissible to the United States for making a willful misrepresentation of a material fact (his intent) in order to procure entry into the United States.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that the applicant entered the United States without inspection in December 1999. He departed the United States voluntarily in June 2001. The applicant re-entered the United States in September 2001 with an unexpired visa, but overstayed without authorization

until June 2003, when the applicant voluntarily departed the United States. As the applicant had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the officer in charge correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's spouse. 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).

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.

The record contains one statement from the applicant's spouse, a naturalized U.S. citizen. As stated by [REDACTED] "...As a mother it kills me to see my children suffering for not been [sic] with their father, at the same time as a wife, it hurts me to know my husband is going thru [sic] rough times for not been [sic] with us taking him to a depression. As a woman it's [sic] been a mixture of feelings among sadness, agony and depression. There's time I feel I am falling into a black hole with no end but then I think on my children and I try to gain straight [sic] for them. As a woman I also need the loving, caring and

support of my husband..." Letter from [REDACTED] dated December 9, 2004. There is no documentation establishing that the applicant's spouse's financial, emotional or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding her depression, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's absence. Finally, while the applicant's spouse may need to make other arrangements with respect to the children's continued physical, emotional, scholastic and financial care, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *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 aliens being deported.

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 this case, counsel has not asserted any reasons why the applicant's spouse and children are unable to reside with the applicant in Mexico, or in any other country of their choosing.

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 will face extreme hardship if the applicant is refused admission. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, emotional hardship is a common result of separation and does 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. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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).

The AAO finds that the officer in charge properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's spouse would suffer hardship beyond that normally expected upon the refusal of entry of a spouse.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval 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.