

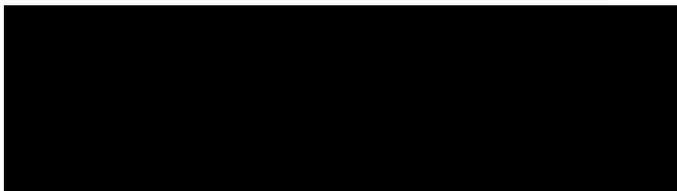
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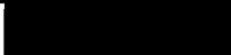
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FILE:



Office: CHICAGO DISTRICT OFFICE

Date:

APR 15 2008

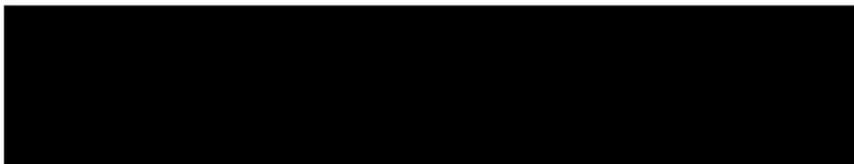
IN RE:



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

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

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 is the spouse of a United States citizen, 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 husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant were required to return to Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the District Director found that the applicant entered the United States, fraudulently, in 1996 by presenting the I-94 card of another person (who was a lawful permanent resident of the United States) in order to gain entry. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute his inadmissibility; rather, she is filing for a waiver of her inadmissibility.

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 provides that:

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 section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant or her children would experience upon

denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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 applicant is required to demonstrate that her husband would face extreme hardship in the event the waiver application is denied, regardless of whether he joins her in Mexico or remains in Illinois without her.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held 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 reflects that the applicant's husband is a forty-four-year-old citizen of the United States. He and the applicant have been married since February 19, 1990. They have two children, both of whom are lawful permanent residents of the United States.

In her March 18, 2002 affidavit, the applicant states that she understands her actions were in violation of the law; that the only reason she did so was because she had no one in Mexico with whom to stay, as her husband, children, parents, and siblings were all in the United States; that she has not taken any jobs from United States citizens; and that she has never been a public charge.

On appeal, counsel asserts, and submits extensive documentation to demonstrate, that the applicant's son suffers from hearing loss in both ears: moderately-severe sensorineural hearing loss in his left ear, and profound hearing loss in his right ear. Counsel asserts that the applicant's son would suffer extreme hardship if the waiver application were denied, as he would be left without his primary caretaker if he did not relocate to Mexico, or, if he relocated to Mexico, he would suffer hardship "with respect to his rehabilitation and treatment." With regard to the applicant's husband, the qualifying relative, counsel states that he would suffer extreme hardship if the waiver application were denied "because his son is a special needs child."

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

As noted previously, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to Mexico, regardless of whether he joins her in Mexico or remains in Illinois without her. 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.

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 will face extreme hardship if the applicant returns to Mexico without him. The record does not establish that he faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. No evidence was submitted or claims made that he would experience financial, emotional, or medical hardship that would rise to the level of "extreme" as contemplated by statute and case law. Counsel's statement that the applicant's husband would face extreme hardship "because his son is a special needs child" is insufficient. While the AAO notes the applicant's son's hearing impairment, the applicant has not explained how their son's diagnosis impacts her husband. She has not established that, without her presence in the United States, their son's diagnosis would cause extreme hardship to her husband. Moreover, the AAO notes the presence of an extended family network in the United States, and the applicant has not explained why these family members would not be able to assist her husband in taking their son to school, therapy appointments, etc.¹

¹ While the AAO is not permitted to consider whether denial of the waiver would result in extreme hardship to the applicant's children, it does note that, as lawful permanent residents of the United States, they would not be required to return to Mexico upon denial of the waiver application.

Reliance upon their son's hearing impairment in order to gain approval of the waiver is insufficient; the applicant must explain how that impairment, without her presence, would impact her husband and cause him extreme hardship. The costs of separation, both financial and emotional, are faced by everyone in the applicant's husband's situation and, absent such a specific demonstration as to how their son's impairment would impact the applicant's husband's, the record fails to establish that the hardships he would face would be greater than those faced by others facing the deportation of a spouse.

Nor has the applicant established that her husband would face extreme hardship if he joined her in Mexico, as the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. Diminished standards of living, separation from family, and cultural readjustment are to be expected in the applicant's husband's situation. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.