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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, ILLINOIS

Date:

APR 15 2008

IN RE:

PETITION: 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 PETITIONER:

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, Chicago, Illinois, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 is the wife of a lawful permanent resident of the United States. She sought a waiver of inadmissibility, which the District Director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated July 14, 2005.* The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

For an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

In the Record of Sworn Statement dated June 8, 2005, the applicant indicates that on her first attempt to enter the United States in 1993 she was caught and sent back to Mexico on that day. She states that she gained

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

entry into the United States on the second attempt, which was made on the same day of her first attempt. The applicant states that in May 2001 she left the United States, returning back illegally in May.

The record reflects that the applicant was unlawfully present in the United States from 1993 to May 2001. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence from April 1, 1997. From April 1, 1997 to May of 2001, the date when the applicant voluntarily departed from the country, she had accumulated four years of unlawful presence. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The AAO notes that the record discloses that the applicant is also inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for seeking admission into the United States by fraud or willful misrepresentation. The Record of Sworn Statement dated January 3, 1993 indicates that the applicant falsely claimed to be a citizen of the United States to immigration inspectors in order to gain admission into the United States.

The AAO will now consider whether the grant of a waiver if inadmissibility is warranted.

With regard to a waiver for unlawful presence, section 212(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant’s husband. If extreme hardship to the 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).

With regard to a waiver of inadmissibility for making a false claim to U.S. citizenship, sections 212(a)(6)(C)(ii) and (iii) of the Act state that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. Because the applicant’s false claim to U.S. citizenship was made to an immigration inspector in 1993, she is eligible to apply for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), which has the same requirement of establishing extreme hardship to a U.S. citizen or lawfully resident spouse or parent as section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N

Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant, and in the alternative, that he remains in the United States without her. 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 contains income tax records, employment letters, marriage and birth certificates, a letter by Heartland Health Outreach, Inc., and other documents.

The July 14, 2005 letter that is signed by [REDACTED] APN/CNP, and [REDACTED] MD, of Heartland Health Outreach, Inc., indicates that on July 12 the applicant's husband had a cardiac stress test performed at John Stroger Hospital, which was "positive for . . . ischemia by ECG criteria." The letter states that the applicant's husband is "at risk for a heart attack," and it conveys that the applicant's husband was referred to a cardiologist at Stroger Hospital. The letter states that "it will take several months before the applicant's husband is fully evaluated and receives a recommendation on whether or not surgery is necessary."

In the affidavit submitted on appeal the applicant states that her husband had been consulting a doctor since spring because he had not been feeling well. She states that although her husband has always been healthy, his doctor said that he might need heart surgery because of arterial problems. She states that whether her husband requires surgery or medication her presence will be important for his recovery. She states that if her husband requires surgery, she will be his only caregiver as their two younger children live and work in Missouri.

The applicant's affidavit subscribed and sworn on June 7, 2005 conveys that the applicant and her husband worked hard so their children would have a good future. The affidavit states that the applicant has been in the country for 11 years without any problems or governmental assistance. It states that by living in the United States the applicant would continue helping her church, children, and parents.

The record fails to establish that the applicant's husband would experience extreme hardship if he remained in the United States without her.

The applicant asserts that she is needed to care for her husband because of his heart condition. The AAO finds that the letter by Heartland Health Outreach, Inc. stating that the applicant's husband had a cardiac stress test performed at John Stroger Hospital that was "positive for . . . ischemia by ECG criteria," is vague and lacks specificity as to the actual condition of the applicant's husband. The medical records and evaluation from John Stroger Hospital, which would have provided additional information on the condition of the applicant's husband, were not submitted into the record. 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)).

It is noted that the applicant makes no financial hardship claim.

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he were to join the applicant to live in Mexico.

The applicant makes no hardship claim if her husband were to join her to live in Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under the Act.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.