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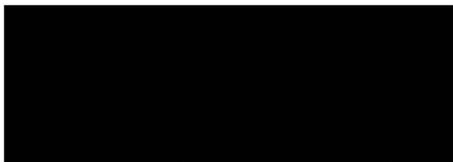
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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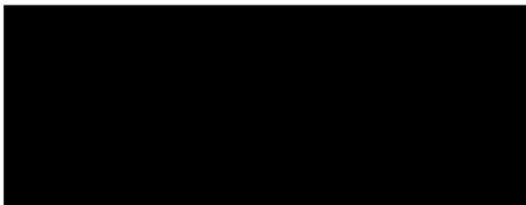


FILE: [REDACTED] Office: PHOENIX, AZ Date: **AUG 04 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: 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 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant's spouse is a U.S. citizen. The applicant is the beneficiary of an approved Petition for Alien Relative filed on her behalf by her husband. She presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States.

The district director determined that the applicant was inadmissible, and that she was ineligible for a waiver of inadmissibility because she could not establish that such denial would result in extreme hardship to her U.S. citizen spouse. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that the director erred in not considering the hardship that denial of a waiver would cause to her lawful permanent resident mother and U.S. citizen children. *See Applicant's Appeal Brief.*

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The director found the applicant to be inadmissible based on her fraudulent use of an Alien Registration Card to gain admission to the United States in 1993. The applicant does not dispute this finding. The AAO therefore affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant.¹ Hardship to the

¹ The AAO notes that there is no evidence in the record to corroborate the applicant's claim that her mother is a lawful permanent resident of the United States. The AAO therefore need not consider hardship to the applicant's mother, when

applicant herself is not a permissible consideration under the statute. Hardship to the applicant's children is also not a relevant consideration under the statute.

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 has held:

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 applicant's spouse, [REDACTED], is a 45-year-old native of Mexico who became a U.S. citizen upon his naturalization in 1997. The couple was married in Mexico on December 18, 1991. They have three native-born U.S. citizens, born in 1984, 1986 and 1988. The record does not contain any evidence to corroborate the applicant's claim of hardship to her husband. The AAO notes that the applicant is well-employed, earning a salary of approximately \$42,000 in 2004. The AAO further notes that the applicant's spouse resides with at least two of his three adult U.S. citizen children. There is no evidence in the record that the applicant's spouse depends on the applicant for financial support, or that separation from the applicant would result in hardship beyond the unfortunate, yet expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States. There is also no evidence in the record to suggest that the applicant's spouse could not relocate to Mexico, should he decide to do so. Nor is there evidence in the record to suggest that such relocation would result in extreme hardship to the applicant's spouse.

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 would face extreme hardship if the applicant is denied the waiver. Although the AAO recognizes that the family's separation would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." See *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not

the applicant has failed to establish that her mother is a qualifying relative. The AAO notes further that the record does not contain any evidence regarding the applicant's mother's circumstances, except a statement by counsel in the Applicant's Appeal Brief stating that she is 70 years old and that the applicant and her siblings care for her.

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").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. 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). 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 also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. 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.