

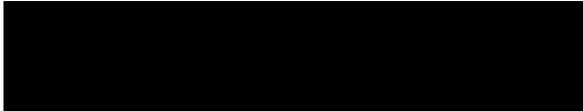


U.S. Citizenship
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DEC 15 2008

FILE: Office: LOS ANGELES (SANTA ANA) Date:

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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 application will be denied.

The applicant, [REDACTED], is a native and citizen of Mexico who 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), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated August 4, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (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 chapter is inadmissible.

The record reflects that the applicant procured admission into the United States on October 6, 1995 by presenting a false alien registration card in another person's name. In light of the misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 . . .

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's spouse who is a naturalized citizen of the United States. Once extreme hardship is

established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins her to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"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. 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).

In the appeal brief, the applicant states that he has a close relationship with his wife and children, who are 10 and 7 years old. He conveys that he would be sad and depressed if separated from his wife, who he has been married to for 11 years. He states that his wife is the family's motivator, that she takes care of their children and the household, and that he would not be able to parent his children without her. He indicates that he would not be able to adapt to living in Mexico because of its working conditions and low wages, its high crime rate and unhealthy air, and its political situation.

In support of the waiver application, the record contains, in addition to other documents, the following:

- A psychological evaluation dated August 21, 2006, by [REDACTED], a psychologist. Ms. [REDACTED] states that [REDACTED] has two brothers and two sisters and a mother living in Mexico. She states that [REDACTED] attended college for two semesters in Mexico, and has been employed for the last 15 years as a cook with Disneyland Hotel. She conveys that he is

depressed about his wife's possible deportation to Mexico, that he has mood swings and is **easily irritated, and without the presence of his wife,** [REDACTED] is concerned about resuming consuming alcohol, which he had ceased doing because his wife helped him maintain sobriety. She states that [REDACTED] feels that he will not be able to parent his children well on his own, and that their household requires his wife's income, and without it he will need a second job and will have the additional cost of childcare. [REDACTED] conveys that the applicant is depressed and worries about her children and her husband if she were separated from them. She states that the applicant contributes to nearly half of the family's income and that in Mexico she could not help her family financially because she would have difficulty providing for her own sustenance. [REDACTED] states that the applicant's 10-year-old daughter is worried about her mother's predicament and her 7-year-old son has been having nightmares. **She states that [REDACTED] and his wife and children would have no place to live in Mexico, as [REDACTED]'s relatives live below the poverty level and cannot assist them; and that [REDACTED] would be unable to find employment which would support his family.** She states that his children would lose their U.S. education and life as U.S. citizens, and would be unable to compete with U.S. workers **or find a good job if they returned to the United States.** [REDACTED] conveys that Mr. [REDACTED] comes from a broken family and carried his sad childhood through adulthood. She states that he developed a depressive condition described in the Diagnostic and Statistical Manual IV-TR (DSM IV-TR) as Dysthymic Disorder, which he never received treatment for, but medicated with alcohol consumption. She states that he is at risk of going back to his old habits, and that his children may suffer the consequences of having to be raised by an alcoholic father. She conveys that separation from the applicant will affect the welfare and emotional stability of the [REDACTED] family.

School records of the [REDACTED] children.

- Documents entitled "Advanced Composition for Non-Native Speakers of English," "Tips and Tendencies," "Crime in Mexico," and "Mexico City Air Hurting Kids." Warnings about demonstrations by the Embassy of the United States, Mexico.
- An August 15, 2005 letter by [REDACTED] in which he states that he earns \$11.65 with Disneyland and would not be able to support his family on his income alone. He states that working conditions in Mexico are not favorable to U.S. citizens and he would not be able to earn a living there to support his family.
- A mortgage statement reflecting the total amount due of \$1,072.24.
- A bank statement, photographs, birth certificates, and a marriage certificate.
- An employment letter dated August 9, 2005, by Disney Worldwide Services, Inc., showing [REDACTED] earns \$11.45 each hour.
- An employment letter dated August 10, 2005, by [REDACTED], showing the applicant has worked there since April 2000, is employed as a bindery helper, and earns \$10.50 each hour.
- An employment appraisal.
- An automobile finance agreement.
- Wage statements, income tax records, and a W-2 for 2004 showing the applicant's gross pay as \$22,294.91 and the family's total gross income as \$46,777. The parents of the applicant are shown as dependents.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

claims that his income alone is insufficient to pay all of the household expenses. The income tax records for 2004 show his income was \$24,513. Although the record contains documentation of the family's mortgage statement and its automobile contract, those documents are not enough to demonstrate that his income is not enough to financially support his family. A complete list of monthly expenses along with supporting documents is needed to show that Mr. Gutierrez requires his wife's income to meet monthly expenses. 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 notes that it has not been established that the applicant's parents would be unable to provide childcare given that they are shown as dependents in the 2004 income tax return.

describes the emotional hardships the [REDACTED] family has experienced. The Dysthymic Disorder she diagnoses [REDACTED] with is a condition she associates with his childhood and not with his wife's immigration problems. The record does not demonstrate that Mr. [REDACTED] social, occupational, or daily functioning has been impaired by his Dysthymic Disorder or by a problem with alcohol.

Although the input of a mental health professional is respected and valuable, the submitted evaluation by [REDACTED] is based on a single interview between her and the applicant's spouse. Being based on a single interview, the conclusions reached in the evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Courts have stated that "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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship

that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, the AAO finds that the situation of [REDACTED], if he remains in the United States without his wife, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shoostary, Perez, and Sullivan, supra*.

The conditions in the country where the applicant’s qualifying relative would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[REDACTED] asserts that he will have difficulty finding employment in Mexico that will sustain his family; he submits documents, “Advanced Composition for Non-Native Speakers of English” and “Tips and Tendencies,” in support of his assertion. The document “Advanced Composition for Non-Native Speakers of English” discusses the causes of poverty in Mexico, and seems to serve as a writing sample of an advanced composition that is intended for an audience of non-native speakers of English. Furthermore, the author of the document provides no citations or references in support of the statements she makes about the causes of poverty. With “Tips and Tendencies,” the document has a significant number of grammatical errors, making it difficult for the AAO to comprehend its content. For example, it states that “[REDACTED] is cord beyond the 60 has 60 years of age and to the 59 he was found.” The record before the AAO therefore fails to demonstrate that [REDACTED] would not be able to find employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

[REDACTED] indicates that he will not be able to adapt to live in Mexico, and to show this he presents articles on its high crime rate, unhealthy air, and political situation. Although Mexico has a high level of crime, the applicant has not established that he would be the victim of criminal activity if he were to live there. “General economic conditions in an alien's native country will not establish “extreme hardship” in the absence of evidence that the conditions are unique to the alien.” *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). The crime rates per 100,000 inhabitants for the years 1998, 1999, and 2000, as given in the article, are outdated and do not reflect crime rates for 2006, which was when the waiver application was denied. Similarly, the article “Mexico City Air Hurting Kids” is outdated, reflecting air quality in 1998, instead of 2006.

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 Mr. [REDACTED] if he were to remain in the United States without his wife, and alternatively, if he joined her in Mexico. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has not been established.

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 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. The application will be denied.

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