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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

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FILE: [REDACTED] Office: HARLINGEN

Date:

DEC 30 2008

IN RE: [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)

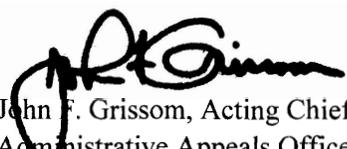
ON BEHALF OF APPLICANT:

[REDACTED]

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, Harlingen, Texas 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 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by her U.S. citizen spouse 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 spouse.

The record reflects that the applicant did not disclose that her children had been born in the United States on her application for a nonimmigrant border crossing card. The applicant and her spouse, [REDACTED] were married on December 17, 2004 in the United States. The applicant has three children from a previous marriage, all born in the United States. The applicant's spouse filed the Form I-130 petition and the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 29, 2004. The Form I-130 was approved on May 5, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated March 27, 2006.

On appeal, counsel submits evidence to demonstrate that refusal to grant the applicant admission to the United States will result in extreme hardship to her spouse. This evidence includes, among other documents, a psychological evaluation from [REDACTED] LPC; a letter from the applicant; a letter from [REDACTED] a letter from the applicant's daughter [REDACTED], letters from other acquaintances of the applicant and her spouse; copies of birth certificates; family photographs; school records for the applicant's children; copies of documents relating to the purchase of a house by the applicant and her spouse; business records for the applicant's spouse's business; copies of bank statements and monthly payments for the applicant and her spouse. The record also contains copies of tax returns for the applicant and her spouse. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the elements of material misrepresentation are defined as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

The record reflects that the applicant did not disclose that her children had been born in the United States on her application for a border crossing card. The applicant's misrepresentation is material because it shut of a line of inquiry that may have resulted in denial of the application for a border crossing card on the grounds that she resided in the United States and was thus an intending immigrant. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides that:

- (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 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 waiver of inadmissibility under section 212(i) 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 and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a 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).

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 applicant 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 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.

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).

U.S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. 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 his letter, the applicant’s spouse states that he would “not be able to live without [his] wife” because she takes care of him, the children and their home. He states that she is not able to take the children to see the doctor in Mexico. He asserts that it would be difficult for the children to live in Mexico because they have been born and raised in the United States. He further asserts that he could not live in Mexico because everything he had, including his job, is in the United States.

In her evaluation, [REDACTED] summarizes statements made by the applicant’s spouse during an interview concerning his fear of losing “everything he has worked for” and his fear for the well-being of his wife and family in Mexico, but [REDACTED] provides no diagnosis of any mental health condition suffered by the applicant’s spouse.

In his letter, [REDACTED] states that the applicant “recently visited a local emergency room for an acute illness and found to have abnormal incidental finding in one of the exams that was performed,” but does not provide the name of the illness or offer any diagnosis of a medical condition suffered by the applicant. He states only that the applicant “would like to go to Mexico for a second opinion at a more affordable price.”

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The applicant's spouse does not rely on the applicant for financial assistance, and there is no evidence that he requires her care for any health condition. The applicant and her spouse are recently married, and he is not the biological father of her children. The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also failed to demonstrate that her spouse would experience extreme hardship if he relocated to Mexico. The AAO acknowledges that the applicant's spouse would have to abandon his employment in the United States if he relocated to Mexico, but the applicant has failed to submit evidence showing the applicant's spouse would be unable to secure employment and support his family 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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 rests with the applicant. *See* 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.