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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CIUDAD JUAREZ, MEXICO

Date:

FEB 04 2008

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), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. Documentation was subsequently sent to the AAO establishing that the appeal was timely filed. The AAO will therefore withdraw its prior decision and sua sponte reopen the matter. The appeal will be dismissed.

The applicant, a native and 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 procuring admission into the United States by fraud or willful misrepresentation. The applicant, therefore, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). In addition, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of 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, therefore, also seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 31, 2006.

In support of the appeal, the applicant provided a letter and translation from her spouse, a U.S. citizen, dated September 28, 2006. The entire record was reviewed and considered in rendering this decision.

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 states, in pertinent part, the following:

- (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 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 (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....

Section 212(a)(9) of the Act provides, in pertinent part:

- (B) Aliens Unlawfully Present.-
 - (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

. . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . .

(v) Waiver. – The Attorney General [now the Secretary of 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....

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant misrepresented herself when entering the United States with her Border Crossing Card on numerous occasions between 2002 and 2005; by presenting her Border Crossing Card at the port of entry, the applicant was affirming that her intentions were to visit the United States temporarily, when in fact, she provided a sworn statement to an immigration officer on March 1, 2005 that confirmed that she had used her Border Crossing Card with the intention of residing in the United States with her husband. The applicant's Border Crossing Card was ultimately canceled in March 2005 by an immigration officer, due to her admitted misrepresentations. The applicant is therefore inadmissible to the United States for making willful misrepresentations of a material fact (her immigrant intent) multiple times between 2002 and 2005 in order to procure entry into the United States.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that on March 1, 2005, the applicant provided sworn testimony to an immigration officer confirming she had resided in the United States from July 2002 until March 2005. As the applicant had resided unlawfully in the United States for more than one year and then sought admission within ten years of her last departure, the officer in charge correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.¹

¹ On appeal, the applicant's spouse asserts that the applicant "...got denied by mistake, because every time that she used to enter to USA, she used to come with a visitor permit, and her visa and she used to stay here around two to three months and then travel back...she used to come to visit only, and she never used to stay here more than the time..." Letter from [REDACTED] dated September 28, 2006. Based on the applicant's sworn statement, the AAO concurs with the officer in charge that the applicant's spouse materially misrepresented her intentions when applying for

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission under section 212(a)(9)(B)(v) of the Act resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act, are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's spouse is the only qualifying relative, and any hardship to the applicant or their son cannot be considered, except as it may affect the applicant's spouse. 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 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) 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 contains one statement from the applicant's spouse, a naturalized U.S. citizen. As stated by

You will see that is so hard to live with out your wife and specially your son, and now they are living in more than 12 hours away from you, who wants to live with out our father and

admission to the United States between 2002 and 2005 with her Border Crossing Card and is inadmissible based on misrepresentation. Moreover, as the applicant admitted in the aforementioned statement that she had resided in the United States for two years and eight months and then departed the United States, it has been established that the applicant accrued unlawful presence of at least one year and is inadmissible based on unlawful presence.

The burden is on the applicant to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The AAO notes that even if the applicant were able to establish that the above-referenced unlawful presence bar had not been triggered, the applicant is still subject to inadmissibility based on misrepresentation, as discussed above.

with out our mother if you have family you will understand this. Lately I have been getting a lot of stress thinking that I will not have my wife here with me like we plan to be together.

My job is so hard because I have to buy lunch for work, and if my wife would be here she can make me lunch, and so I can get out of the stress. Some times I can't work because of thinking on my son that is he is ok or he need something....

Letter and translation from [REDACTED], dated September 28, 2006.

There is no documentation establishing that the applicant's spouse's financial, emotional or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding his stress, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's absence. Finally, while the applicant's spouse may need to make other arrangements with respect to his own care, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why her spouse, a native of Mexico, is unable to reside with the applicant in Mexico, or in any other country of their choosing.

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 will face extreme hardship if the applicant is refused admission. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Although CIS is not insensitive to his situation, emotional hardship is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law.

The AAO finds that the officer in charge properly denied this waiver application. The record fails to demonstrate that the applicant's spouse would suffer hardship beyond that normally expected upon the refusal of entry of a spouse.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely 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. The waiver application is denied.