



U.S. Citizenship
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Date:

JAN 23 2008

IN RE:

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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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 33-year-old native and citizen of Mexico who was found to be 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), for having attempted to procure admission to the United States by claiming to be a United States citizen. The applicant is the son of a naturalized citizen of the United States. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that his mother would face extreme hardship and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 14, 2006.

On appeal, the applicant, through counsel, states that the director erred in finding that the applicant's mother would not experience extreme hardship if the applicant were to be removed to Mexico. *Form I-290B*, Notice of Appeal to the AAO. The applicant contests the director's inadmissibility finding, claiming that the officers who inspected him at the border failed to follow agency policy. *Id.*

In support of the appeal, counsel submits a brief, dated April 12, 2006, and additional evidence including: an affidavit by the applicant; affidavits by the applicant's mother and grandmother; family photographs; medical records for the applicant's mother and grandmother; education and employment verification letters; rent bills and utility bills; and his 2005 federal income tax return. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act 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 Act is inadmissible.
- (ii) Falsely claiming citizenship. –
 - (I) In General –
Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
 -
- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

The record reflects that on August 20, 1993, the applicant applied for admission to the United States at the Port of Entry at San Luis, Arizona, by claiming to be a United States citizen. The applicant retracted his claim, and was returned to Mexico.

The AAO notes that aliens making false claims to U.S. citizenship before September 30, 1996 are eligible to apply for a Form I-601 waiver. See *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.¹

The applicant claims that border agents failed to follow agency policy by accepting his retraction of the claim to U.S. citizenship, yet processing him as a false claim to U.S. citizenship and expedited removal. See Applicant's Appeal Brief at 2. The AAO notes that the applicant does not cite the agency policy he claims was violated. The AAO further notes that the record does not indicate that the applicant was formally processed as he claims. The AAO is unaware of any agency policy prohibiting the director from finding that the applicant is inadmissible based upon his admitted false claim to U.S. citizenship in 1993.² The AAO finds that the director did not err in finding the applicant inadmissible.

The question remains whether the applicant is eligible for a waiver of inadmissibility.

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 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

¹ The Memorandum states, in relevant part, that

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

² The record contains a handwritten, signed statement by the applicant (dated August 20, 1993) stating that he "claimed to be a U.S. citizen . . . at the San Luis POE" and that he was "simply returned to Mexico & not deported."

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 evidence submitted by the applicant regarding extreme hardship to the applicant's mother (his only qualifying relative) includes medical records indicating that she has been treated for polycystic kidney disease. The record also includes income tax returns pertaining to the applicant and his mother. Additionally, the record includes education and employment verification letters as well as affidavits by the applicant, his mother and his grandmother. The record also includes evidence of the applicant's siblings' U.S. citizenship or lawful permanent resident status.

The applicant claims that he is his mother's sole caretaker. In turn, his mother cares for the applicant's grandmother, who also suffers from polycystic kidney disease. The applicant's mother is 53 years old. She is divorced from the applicant's father, and has been residing in the United States with the applicant since 1992. The applicant has other siblings who reside in the United States. The applicant's mother's medical records do not establish that she is incapacitated to the extent claimed by the applicant. *See e.g.* [REDACTED] Report dated June 11, 2003 (stating that the applicant's mother "feels fair" and is "in no acute distress," and may need "yearly or every other year evaluation"). The AAO notes that there is no evidence in the record regarding the availability of treatment for the applicant's mother's condition in Mexico. In this regard, it is noted further that the applicant's mother as a U.S. citizen is not required to relocate to Mexico. The applicant's mother has other children who reside in San Luis, Arizona who could provide her support despite their own family obligations. The record does not contain any evidence of the applicant's siblings' inability to care for their mother and grandmother. It is also unknown whether the applicant, who is 33 years old, would permanently reside with his mother and care for her should he remain in the United States. The record is also unclear with respect to the extent of care the applicant provides to his mother, given his employment and education commitments. The AAO notes that there is no financial documentation in the record to suggest that the applicant supports his mother. Indeed, the income tax returns in the record indicate that the applicant's mother was employed (as of 2004) and earned more than the applicant. The applicant's mother's 2004 income tax return further indicates that she has a foster child, who she presumably cares for in spite of her illness. The AAO notes that hardship to the applicant's grandmother is not relevant to the determination of whether a waiver of inadmissibility is warranted.

The record, reviewed in its entirety and in light of the hardship factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant is denied the waiver. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States. 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).

While the AAO has carefully considered the impact of separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from family is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “the extreme hardship requirement . . . was not 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”). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s mother due to the potential separation from the applicant rises to the level of extreme. The AAO has also considered the applicant’s claim regarding the living conditions in Mexico. The AAO notes that the applicant’s mother stated in her declaration that she would choose not to relocate to Mexico and, as such, the living conditions in Mexico are only relevant to the extent that their impact on the applicant may cause hardship to his mother. The AAO notes that the applicant’s siblings reside in the United States and could, if required, provide support to their mother. The AAO notes that the applicant’s mother, as a U.S. citizen, would not be required to depart the United States and doing so would be a matter of the family’s choice. The AAO finds that the claimed hardship that would result from the applicant relocating to Mexico, such as the lower standard of living and reduced opportunities, are common results suffered by any family in the applicant’s circumstances and therefore do not amount to “extreme hardship.” *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen mother 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.*