

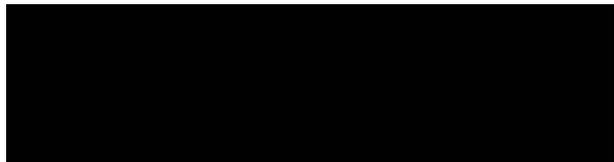
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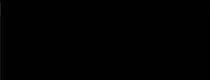
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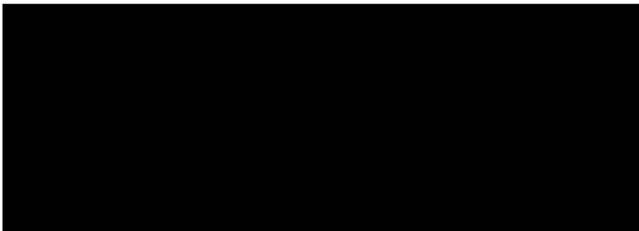
Applicant:



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:



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, Atlanta, Georgia, 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 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's spouse is a naturalized citizen of the United States. 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 December 8, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that in 1994 the applicant filed an asylum application, Biographic Information, and fingerprint card containing false information, including a claim to Guatemalan nationality.

Counsel states that the finding of fraud or willful misrepresentation was erroneous. According to counsel, a *notaria* in Florida prepared the asylum application and the applicant signed the application without reading it. Counsel states that the *notaria* has been cited and fined by the Florida Supreme Court, as shown in the submitted document, for the unauthorized practice of law. Counsel indicates that the applicant received an employment authorization card based upon the asylum application and that the applicant learned afterwards that the *notaria* had duped her as she was not entitled to an employment authorization card and consequently the applicant did not use it for any purpose or carry it with her.

The record contains the determination of the Supreme Court of Florida, issued March 26, 2004, in which the court permanently enjoined and restrained the respondents, including [REDACTED], from engaging in the practice of law in the State of Florida.

In her affidavit, the applicant states that she entered the United States in 1991 and while in Georgia in 1994, learned of an opportunity to obtain legal working papers in Florida. The applicant stated that Georgia had limited availability of legal services at the time. She stated that she paid \$300 to board a van to Florida and was told that the fee would also cover her application. She stated that five other applicants traveled with her. She stated that she was introduced to a *notaria* named [REDACTED] in South Florida, who asked her to sign documents and assured her of their accuracy. The applicant stated that in accordance with [REDACTED]'s instructions she did not read the applications. She stated that [REDACTED] congratulated the group on their new valid immigration status. She stated that an employment authorization card and social security number arrived in the mail thereafter, but that she never used the card and kept it at home. The applicant stated that

she learned that Mexicans do not qualify for an employment authorization card and that she had been ripped off.

Counsel states that knowledge and intent to defraud are necessary to find inadmissibility. Counsel states that in *Forbes v. INS*, 48 F. 3d 439, 442 (9th Cir. 1995) the court stated that knowledge of the falsity is necessary, and in *Bryan v. U.S.*, 524 U.S. 184 (1998), the Supreme Court defined “willful” in the context of a criminal statute as acting “with an evil-meaning mind, that is to say that he acted with knowledge that his conduct was unlawful.” Counsel claims that the applicant did not know that the application that she signed was for political asylum and that it contained a false claim to Guatemalan citizenship; and that because a misrepresentation must be made with knowledge of its falsity to be “willful,” the applicant’s innocent misrepresentation does not establish a willful violation under section 212(a)(6)(C)(i) of the Act.

The AAO finds that the court in *Forbes*, citing *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977), states that the misrepresentation must be deliberate and voluntary and proof of an intent to deceive is not required; knowledge of the falsity of a representation is sufficient. Similarly, in *Chow Bing Kew v. United States*, 248 F.2d 466, 469 (9th Cir. 1957), the Ninth Circuit defined “willfully” as used in 18 U.S.C. § 911, which deals with a willfully false representation of citizenship, to require proof that “the misrepresentation was voluntarily and deliberately made.”

Counsel claims that the applicant’s misrepresentations contained in the asylum application, Biographic Information, and fingerprint card were not willful. The AAO finds that the applicant failed to sufficiently demonstrate that her misrepresentations were not deliberate and voluntary. The applicant had been living in the United States for approximately three years before she traveled from Georgia to Florida to obtain legal working papers. The applicant fails to sufficiently explain why she traveled to a state other than the one in which she lived in order to obtain legal working papers, why she believed she was entitled to obtain legal working papers, why she agreed to sign documents that she was specifically instructed not to read, and what had been communicated to her about the content of the documents she was to sign.

The Foreign Affairs Manual states that “[a]n alien who acts on the advice of another is considered to be exercising the faculty of conscious and deliberate will in accepting or rejecting such advice” and that “[i]t is no defense for an alien to say that the misrepresentation was made because someone else advised the action unless it is found that the alien lacked the capacity to exercise judgment. FAM I, 40.63 Notes, N5.2.

The applicant was nearly 23 years old at the time she signed the asylum application, Biographic Information, and fingerprint card. Although the applicant claimed to have signed these documents without reading them based upon the advice of a *notaria*, there is no evidence in the record to suggest that the applicant lacked the capacity to exercise judgment, which would have meant ensuring the accuracy of the documents before signing them. Thus, it is no defense for the applicant to say that the misrepresentations contained in the asylum application, Biographic Information, and fingerprint card were made because someone else advised her to sign documents without ensuring their accuracy.

It is noted that the regulation at 8 C.F.R. section 103.2(a)(2) states that an applicant must sign her application and that by signing the application, the applicant certifies under penalty of perjury that the application is true and correct.

Based on the evidence, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting material facts so as to gain an immigration benefit, employment authorization, under the Act.

The section 212(i) waiver for fraud and misrepresentation states 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.

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 the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"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).

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant 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.

The record contains, among other documents, birth certificates, letters, a psychological evaluation, a marriage certificate, a naturalization certificate, wage statements, and income tax records.

On appeal, counsel states that the district director failed to consider the submitted evidence and its cumulative impact in establishing extreme hardship. Counsel states that the applicant is 34 years old and has U.S. citizen children who are 11 and 3 years old. Counsel states that the applicant has never been employed in Mexico or in the United States and that the applicant’s age would make it difficult for her to obtain the education or job skills necessary for employment in Mexico. Counsel states that the applicant and her husband do not have substantial family ties to Mexico as their siblings are in the United States. Counsel states that the mental health of the applicant’s husband and children will be affected if the applicant were no longer in the United States. Counsel states that the applicant’s husband provides the family’s sole income and the applicant cares for the children and house. Counsel states that the applicant’s husband is a construction foreman and often travels to locations that are out of state for extended periods. Counsel states that the applicant and her husband do not have significant family support in the United States. Counsel states that the applicant’s children’s social and educational upbringing will be impacted if their mother is not in the country. According to counsel, the applicant’s husband’s constant worry about his wife is shown by the results of psychological tests, which indicate mild to moderate depression. Counsel states that the applicant volunteers at her daughter’s school and that the applicant provides crucial support for her daughter’s emotional stability and well-being. Counsel conveys that the applicant’s husband does not earn enough money to support his wife and children in Mexico or his children if they were to remain with him in the United States.

The evaluation of the applicant’s husband by [REDACTED], conveyed that the applicant’s husband is concerned about who will provide care for his children if his wife were deported because he sometimes leaves for work at three in the morning, and works out of state. Dr. [REDACTED] stated that the applicant’s husband indicated that he wants his children to study and have careers in the United States, and will not be able to afford high school for them in Mexico. She stated the applicant’s husband conveyed that it is his family that inspires him to work. Ms. [REDACTED] indicated that testing shows the applicant’s husband is concerned about providing for his family and losing them; and is struggling with symptoms of depression such as hopelessness, guilt, low energy; and is having trouble sleeping.

The letter by Ms. [REDACTED] with Meadowcreek Elementary stated that the applicant’s husband travels out of town and that the applicant provides stability for the children.

The letter by the applicant’s daughter conveyed that she needs her mother and her father works out of town.

The employment letter dated October 30, 2005 by the president of Allphase Construction, Inc. stated that the applicant's husband has been employed there since January 2004, that he is a foreman, and frequently travels to other states to supervise crews. The president indicated that the applicant's husband was involved in projects in Alabama, Florida, Mississippi, and Louisiana. The president stated that the crews are sent to jobsites for 5 to 6 days at a time with leave on the weekends. He stated that each job is completed in 2 to 3 month long phases that alternate with other trades.

The October 5, 2005 letter by Allphase Construction, Inc. stated that the applicant's husband earned \$20 per hour, working at least 40 hours per week.

The 2004 income tax records show the applicant's in-laws as dependents.

The birth certificates show the applicant's daughter was born on July 28, 1995 and her son on January 14, 2002.

The record contains invoices for MediaOne (\$45.91), Atlanta Gas Light (\$70.23), and Jackson Electric (\$204.99).

The AAO finds that the record fails to establish extreme hardship to the applicant's spouse if he remained in the United States without the applicant.

The AAO finds that the invoices and employment letter, which shows the applicant's husband as earning \$20 per hour, is not sufficient to support the applicant's husband's claim that he is financially unable to support his wife in Mexico, his wife and children in Mexico, or his children if they were to live with him in the United States. Documentation of the family's household expenses is needed to establish that the applicant's husband would be unable to financially support his family in these described circumstances. 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 the applicant's parents are shown as dependents on the 2004 income tax records. No documentation has been provided to establish that the applicant's in-laws would not be able to provide childcare for their grandchildren.

With regard to the psychological evaluation of the applicant's husband, although the input of a mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression experienced by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview and tests, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Dr. [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Family separation is important in determining 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, the fact that an applicant has children born in the United States is not sufficient, in itself, to establish extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as did the court in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, 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 record conveys that the applicant’s husband is very concerned about separation from his wife. 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, however, the AAO finds that the situation of the applicant’s husband, 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 as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which he will experience, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

The record is insufficient to establish that the applicant’s husband would experience extreme hardship if he were to join his wife to live in Mexico.

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).

The applicant claims that she will not find employment in Mexico on account of her age and lack of education and job skills. Court and BIA decisions, however, have held that difficulty in finding employment is insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (“difficulty in finding employment or inability to find employment in one’s trade or profession is mere detriment”); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment in the Philippines is not extreme hardship).

Although hardship to the applicant’s children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant’s husband, as a result of his concern about the well-being of his children, is a relevant consideration.

The record reveals that the applicant’s husband indicates that he will not be able to afford high school for his children in Mexico and that he wants them to study and have careers in the United States. The AAO finds that no documentation has been provided to establish that the applicant’s husband will not be able to financially afford to have his children attend school 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 considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met to establish extreme hardship. 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 a qualifying family member for purposes of relief 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 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.

ORDER: The appeal is dismissed.