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U.S. Citizenship
and Immigration
Services

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FILE:



Office: PORTLAND, OR

Date: JUL 14 2008

IN RE:



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, Portland, Oregon, 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, on April 13, 2000, attempted to procure admission into the United States by presenting a fraudulent border crossing card. The applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). She reentered the United States without inspection on April 14, 2000. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and she seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The district director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) applies in this matter as the applicant's previous removal order was reinstated following her unlawful admission. *District Director's Decision*, at 3, mailed July 8, 2004. Accordingly, he found the applicant ineligible to apply for relief under the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

Counsel asserts that pursuant to the August 13, 2004, Ninth Circuit Court of Appeals decision, *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), section 241(a)(5) of the Act is not applicable to the applicant's case as the applicant submitted her I-601 application before the reinstatement of her removal order. *Brief in Support of Appeal*, at 1, dated August 14, 2004.

The AAO notes the Notice of Intent/Decision to Reinstate Prior Order dated February 27, 2004. However, the removal order was subsequently cancelled on February 28, 2004. As such, the AAO will adjudicate the applicant's Form I-601 on its merits.

The record includes, but is not limited to, statements from the applicant, her family, her friends; family photographs; bona fide relationship documents; and a judge's letter.

Based on the applicant's April 13, 2000 attempt to procure admission into the United States through misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

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 section 212(i) waiver of the bar to admission is dependent first upon a showing that the bar imposes extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's child is not a permissible consideration except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Mexico or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to show extreme hardship to her spouse in the event of relocation to Mexico. The applicant's friends state that Mexico has a poor educational system, health issues and general safety concerns. *Letter from [REDACTED] and [REDACTED]*, dated March 17, 2004. However, the record does not include sufficient substantiating evidence of the severity of the problems that the applicant's spouse and children will encounter in Mexico, the effect on the applicant's spouse due to his children's hardship or of any other relevant hardship that the applicant's spouse may experience. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he and the applicant have three children, they have been married for 13 years, they have a car and a home, he will not be able to babysit while he is at work, he does not know how he will be able to make payments on his house while supporting the applicant in Mexico, his children would lose opportunities if they moved to Mexico and he would miss them, and their family will encounter severe emotional and financial problems. *Applicant's Spouse's Statement*, dated March 17, 2002. The applicant's friends state that the applicant's spouse, although a hard worker, would be unable to support himself and his children in the United States and his wife in Mexico, and they contend that he would be unable to afford daily child care for his children. *Letters from [REDACTED] and [REDACTED]*, and *[REDACTED] and [REDACTED]*, respectively dated March 17, 2004 and March 19, 2004. The record includes several other statements from family, friends and the applicant's daughter's teacher regarding the

difficulty that the applicant's spouse and children will encounter without the applicant. However, the record does not include substantiating evidence of the severity of the problems that the applicant's spouse and children will encounter without the applicant, the effect on the applicant's spouse due to his children's hardship or of any other relevant hardship that the applicant's spouse may experience due to separation. Moreover, the AAO notes that the record indicated that the applicant and her spouse have family. The AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion 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 who are removed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.