



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: CLEVELAND, OH

Date:

JUL 28 2008

IN RE:

Applicant:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

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). The applicant seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found the applicant had failed to establish that a qualifying family member would experience extreme hardship if the applicant were refused admission into the United States. The Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that the district director gave insufficient weight to the favorable factors in her case, and the hardship that her husband would suffer if she were denied admission into the United States. The applicant indicates that her husband would suffer medical, emotional and financial hardship if she were denied admission into the United States. She indicates further that her daughter would suffer extreme medical hardship if she left the United States.

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

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 applicant does not contest the finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act. Moreover, the record reflects that the applicant is inadmissible under this section, in that she married her U.S. lawful permanent resident husband in Mexico on June 23, 1994. The applicant subsequently applied for, and obtained a B2 visitor visa by declaring that she was "single" on the nonimmigrant visitor visa, application form. The applicant was admitted into the United States as a B2 visitor in September 1994. The applicant's husband filed a Form I-130, Petition for Alien Relative on January 30, 1995, and the applicant changed her status to that of a V-1, spouse of a lawful permanent resident waiting in the U.S. for approval of an immigrant visa in January 2002.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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.

In the present matter, the applicant's husband is a U.S. lawful permanent resident. He is thus a qualifying relative for section 212(i) of the Act purposes. U.S. citizen and lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The record contains the following evidence relating to the applicant's extreme hardship claim:

Affidavits signed by the applicant and her husband [REDACTED], stating in pertinent part that [REDACTED] has an orthopedic lumbar discogenic condition which will require microsurgical treatment, and that [REDACTED] suffers severe pain and counts on the applicant to care for him at home, and to run his restaurants when he cannot function because of his back condition. The applicant and her husband assert that [REDACTED] also depends on the applicant's help to make his restaurants profitable on a daily basis. They state further that their daughter (age 7) has gastroesophageal reflux disorder, and that she is being treated by a doctor and needs special care. The applicant and her husband indicate that [REDACTED] must work to support their family, and that he cannot give their daughter the attention her medical condition requires. They assert that due to her husband's work and back pain, he would also be unable to attend to their children's educational, medical and social needs if he remained in the U.S. without the applicant. The applicant and her husband indicate that they would have no health insurance to cover the family's medical conditions if they moved to Mexico, and they assert that medical treatment in Mexico is less developed and less available. They assert further that their children do not have adequate Spanish language skills to live in Mexico, that their children would not receive a good education in Mexico, that their family's life style would be inferior in Mexico, and that they would not be able to work or run two businesses in Mexico due to the poor economy.

Three affidavits from the applicant's brother, a friend of the applicant's, and the family's pastor, indicating that the applicant is a good person and that her husband and children would suffer hardship if the applicant had to move to Mexico.

A November 11, 2005, letter from [REDACTED] stating that [REDACTED] has an orthopedic lumbar discogenic condition, "which requires surveillance and setting up with time of microsurgical treatment option. . . ." [REDACTED] request that [REDACTED] remain in the area as they progress toward surgical intervention over time.

A November 23, 2005, letter from [REDACTED] stating that the applicant's daughter was diagnosed with gastroesophageal reflux disorder (GERD) at around 13 months, and that she is being treated with medicine for the condition. [REDACTED] states that, "GERD tends to be a chronic disorder with somewhat unpredictable duration. As of now she needs to be on medication to control her symptoms."

Federal income tax forms and wage statements indicating that [REDACTED] worked as an employee for Fiesta Mexicana and Los Cabos Mexico restaurants between 1999 and 2002, and that in 2004 he became a 44% shareholder at Fiesta Mexicana. 2003 federal income tax forms reflect that [REDACTED] became a 100% shareholder of LM of Dublin Inc. in 2003.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her husband would suffer hardship beyond that commonly associated with removal of a family member if the applicant were denied admission into the United States, and he remained in the U.S. The evidence fails to demonstrate that [REDACTED] relies on the applicant financially. Furthermore, the AAO notes the U.S. Supreme Court holding in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." Additionally, the medical evidence contained in the record fails to establish that [REDACTED] medical condition requires immediate surgery, or that it has kept him from working or performing other activities. The evidence also fails to establish that Mr. [REDACTED] requires medically related care and assistance from the applicant. In addition, the record fails to establish that [REDACTED] would be unable to care for, or arrange for, childcare if his children were to remain in the United States with him. The AAO notes further that the record fails to establish that the applicant's daughter requires specialized medical care or treatment that would cause extreme hardship to [REDACTED] if the applicant were not in the United States. The AAO notes that emotional hardship caused by severing family and community ties is a common result of deportation. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.) The applicant has failed to present evidence establishing that [REDACTED] would suffer emotional hardship beyond that normally experienced upon the removal of a family member from the U.S., if the applicant were denied admission into the United States.

The applicant also failed to establish that her husband would suffer hardship beyond that commonly associated with removal of a family member if the applicant were denied admission into the United States and [REDACTED] returned with his family to Mexico. The record contains no evidence to corroborate the assertions that [REDACTED] and the applicant's daughter would be unable to obtain adequate medical attention and care for their conditions in Mexico. The record also lacks evidence to corroborate the assertion that the applicant and her husband would be unable to find work in Mexico. Moreover, the record indicates that [REDACTED] was born and raised in Mexico, and that he met and married the applicant in Mexico, and the AAO notes that hardship involving a lower standard

of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has not been found to rise to the level of extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.)

A section 212(i) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband would suffer extreme hardship in the U.S. if the applicant is denied admission into the United States, it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.