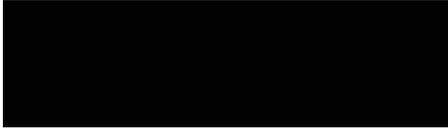


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



H 2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

JUN 04 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), 8 U.S.C. section 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Mexico who 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 having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her naturalized U.S. citizen spouse, [REDACTED], and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The record reflects that the applicant was arrested on April 4, 1992 for having attempted to obtain admission into the United States by using another person's immigration documents. The Form I-130 Petition for Alien Relative was approved on November 19, 1992. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on April 12, 1999. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 21, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated April 18, 2006.

On appeal, counsel contends that substantial evidence in the record establishes that the removal of the applicant would result in extreme hardship to her spouse. Counsel observes that the applicant's spouse relies on the applicant to care for their children and the possibility of her removal and his daughter's medical condition has caused him to suffer from "Adjustment Disorder with Mixed Anxiety and Depressed Mood."

The record contains, among other documents, a psychological evaluation from [REDACTED], Ph.D.; an affidavit from the applicant's spouse; a statement from the applicant; an affidavit from the applicant's mother-in-law; a letter from her physician; various identification documents; a copy of a deed showing that the applicant's spouse owns property; a 2005 Amnesty International Report for Mexico; tax, employment and other financial documents. The entire record was considered in rendering a decision on the appeal.

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.

As stated above, the record reflects that the applicant was arrested on April 4, 1992 for having attempted to obtain admission into the United States by using another person's immigration documents. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident

spouse or parent of the applicant. Hardship to the applicant, her husband and their children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's lawful permanent resident mother is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 applicant 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 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.

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 Ninth Circuit Court of Appeals has stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that she accompanies the applicant or in the event that she remains in the United States, as 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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if he decides to remain in the United States, and may experience hardship in caring for their children if they also remain with him. However, the hardship described by the applicant and her spouse is the typical result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. The U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from I [REDACTED] is based on a single interview between the applicant and her 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 generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Regardless, the evaluation of [REDACTED] does not indicate that the applicant's spouse will experience emotional hardship that is the atypical result of separation caused by inadmissibility or removal.

The applicant has also failed to demonstrate that her spouse will suffer extreme hardship if he chooses to return to Mexico with the applicant. The applicant's spouse is a native of Mexico and the applicant's statement indicates he has family there. The AAO acknowledges the evidence that living conditions in Mexico are generally worse than in the United States, but the applicant has failed to submit specific evidence showing that her spouse will be unable to find employment (and continue his financial support of his mother in the United States) or suffer other hardship there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required 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 rests 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.