



U.S. Citizenship
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FILE:

Office: LOS ANGELES

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:

SELF-REPRESENTED

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 District Director, Los Angeles, 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 Guatemala 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 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 him and their U.S. citizen child.

The record reflects that the applicant attempted to obtain admission into the United States on December 28, 1996 by presenting an altered Guatemalan passport with a United States nonimmigrant visa not issued to her. The applicant's spouse, [REDACTED], filed the Petition for Alien Relative on November 17, 1997. The petition was approved on February 21, 1998. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on October 7, 2002. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 22, 2003.

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 District Director*, dated April 26, 2005.

On appeal, counsel contends that the decision is erroneous with respect to both the facts and the law.¹ *Form I-290B*. Counsel asserts that the applicant's spouse has resided in the United States since he was eight-years-old, not twenty-years-old as indicated in the decision, and that the district director's determination that relocation to Guatemala would therefore not be an "insurmountable transition" for him was based on a misunderstanding of the facts. *Counsel's Motion to Reopen/Reconsider/Appeal* at 2-3. Counsel contends that the applicant's spouse would suffer the hardship of being separated from his entire immediate family if he relocated to Guatemala with the applicant and their son, and that he is not close to any extended family members there. *Id.* at 2-4. Counsel asserts that the applicant's spouse has been employed in the golf recreation industry for many years and that he would not have any meaningful employment opportunities in Guatemala, a country with only five golf courses where the applicant has no connections. *Id.* at 5-6. Finally, counsel observes that Guatemala is a poor country with endemic crime, and that the applicant would be at risk of being a victim both of poverty and crime there. *Id.* at 6-7.

The record contains, among other documents, identification and immigration documents for the applicant's spouse's family members; an article on the golf industry in Guatemala; an affidavit from the applicant's spouse; an affidavit from the applicant; and tax, employment and other financial records. The entire record was considered in rendering a decision on the appeal.

¹ The AAO notes that the applicant was represented by an attorney who was expelled from practicing before the Board of Immigration Appeals, Immigration Judges and the Department of Homeland Security on October 27, 2007. The AAO will now consider her as self-represented. All submissions from prior counsel will be accepted, but the decision will only be sent to the applicant.

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 attempted to obtain admission into the United States on December 28, 1996 by presenting an altered Guatemalan passport with a United States nonimmigrant visa not issued to her. 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 and her child 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 U.S. citizen spouse 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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. 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 he/she accompanies the applicant or in the event that he/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.

In his affidavit, the applicant’s spouse indicates that he and the applicant have been married since 1997 and he “cannot imagine what it would be like to have to live without her.” He further indicates that the applicant is the primary caregiver to their young son, and that it would be “extremely difficult” to find anyone to provide childcare “because my work schedule fluctuates and because my income is limited.” He also asserts that he would suffer emotional hardship in trying to assist his son cope with the absence of the applicant. The applicant’s spouse also states that even though he loves the applicant, “living in Guatemala is not an option.” He contends that he “has a great job as a Golf Instructor” and would have a “very difficult time finding a similar position in Guatemala.” He asserts that his entire immediate family and many other close relatives reside in the United States, and that he is very close to them.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse would suffer emotionally as a result of separation from the applicant if he remains in the United States, and that this separation would also create hardship for the applicant’s spouse in caring for their son. However, there is insufficient evidence in the record showing that this hardship is not merely 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. It is noted that applicant’s spouse has indicated that in spite of his love for the applicant, he would not relocate to Guatemala to be with her. Also, the applicant’s spouse indicates that his income is so limited that he cannot afford childcare for his son, but also states that he could not return to Guatemala because he could not find employment comparable to his “great job” in the United States.

The applicant has also not demonstrated that her spouse would suffer extreme hardship if he relocated to Guatemala. The AAO acknowledges that the applicant’s spouse would be separated from the adult members of his immediate family and other relatives if he relocated to Guatemala, but also notes that the Ninth Circuit Court of Appeals in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children, not the hardship involved in separating a married adult child from non-dependent parents and siblings with whom he does not reside. The evidence shows that the applicant was

born in and has extended family in Guatemala. Counsel's assertion that the applicant's spouse has resided in the United States since he was eight-years-old is not substantiated by other evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Also, the evidence submitted by the applicant showing that the golf recreation industry is small and the limited to the elite in Guatemala is insufficient to demonstrate that the applicant's spouse would be unable to secure employment in his chosen profession 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.