

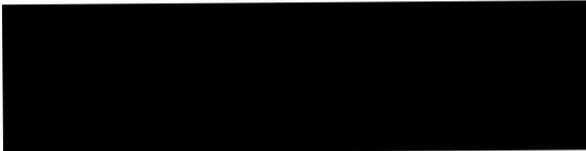
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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES

Date:

JUN 05 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 PETITIONER:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is the wife of a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative. She 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 district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of District Director* dated January 25, 2006.

On appeal, the applicant asserts that her husband and children need her support and would suffer extreme hardship if she is removed from the United States. She states that her husband has been a Lawful Permanent Resident for fifteen years and has a good job and that it would be very difficult for the applicant and her husband to find employment in Mexico. *See Reasons for Appeal* at 2. She further states that her children would be denied the opportunity of a good education because she and her husband would not be able to afford to send them to school in Mexico. The applicant further states that separating the family is not an option because it would destroy their relationship and cause her husband emotional, psychological, and financial hardship. *See Reasons for Appeal* at 3. In support of the waiver application, the applicant submitted a letter from her husband and copies of the birth certificates of her U.S. Citizen children. The applicant asserts that this statement from her husband should be considered substantial evidence and claims that it is difficult to prove psychological and emotional hardship or the financial hardship that would result from relocation to another country with documentary evidence. *See Reasons for Appeal* at 3.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 AAO notes that the record contains several references to the hardship that the applicant's U.S. Citizen children would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes

extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a forty-three year-old native and citizen of Mexico who has resided in the United States since August 1989, when she entered the United States with a fraudulent Mexican passport. The applicant's husband is a forty-six year-old native and citizen of Mexico who has been a Lawful Permanent Resident since 1988. The applicant and her husband reside in Corona, California with their five U.S. Citizen children.

The applicant asserts that her husband would suffer extreme hardship if he relocated to Mexico with her because they would have to start their lives all over again. The applicant further states,

It would be hard for us to obtain employment in Mexico, and earn enough money to support our family and comply with all the financial responsibilities we have acquired so far, including a mortgage. Mexico is a country with over population and very high levels of unemployment.
Reasons for Appeal at 2.

The applicant's husband states in a letter submitted with the waiver application that they have "been working very hard to improve [their] lives here" and that he has a good job and he cannot leave it. No other evidence was submitted to support the assertion that the applicant's husband would suffer extreme hardship if he relocated to Mexico, such as documentation concerning the applicant's husband's employment, their mortgage, or economic conditions in Mexico. Further, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record does not establish that the applicant's husband would suffer extreme hardship if he relocated to Mexico with the applicant.

The applicant states that the family could not live separately and that her husband would suffer emotional and psychological hardship if he were to remain in the United States without her. The applicant's husband further states that he needs the applicant to help take care of their children while he is working to "support all the family and the house," and that he loves the applicant and could not live without her. *Letter from [REDACTED]*

[REDACTED] No evidence was submitted with the waiver application to document the income and expenses of the applicant and her husband or otherwise establish the effects of her removal on her family's economic situation. However, even if the loss of the applicant's income would have a negative impact on her husband's financial situation, this economic detriment would be insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

The applicant also stated that her husband would suffer emotional hardship if he is separated from her, but there is no evidence provided concerning his mental health or any emotional hardship he might experience if the applicant were returned to Mexico. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

It appears from the record that any emotional or financial hardship to the applicant's husband would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.