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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: PHOENIX, AZ

Date: MAR 24 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.

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, Phoenix, Arizona 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and their three United States citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 14, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*; Counsel's brief, dated February 26, 2008.

In support of his assertions, counsel submits a statement. The record also includes, but is not limited to, a statement from the applicant's spouse; billing statements and insurance payments, Arizona Allergy Association, Phoenix, Arizona; school report cards for the applicant's children; a statement from the applicant's sister; a letter from the applicant's church; letters of employment for the applicant and her spouse; tax statements and W-2 forms for the applicant and her spouse; an arrest report for the applicant; and bank statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant admitted in her adjustment of status interview that she procured admission into the United States by using another person's passport and visa. *Form I-485 processing sheet*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Any hardship to the applicant's children will be considered only to the extent of its effect on the applicant's spouse. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico and he continues to have family there. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse states that he only attended school in Mexico up to the third grade and that due to his limited education and lack of formal training, it would be extremely difficult if not impossible for him to obtain a job in Mexico. *Statement from the applicant's spouse*, dated January 26, 2006. The applicant's spouse fears that he will not be able to financially provide for his family. *Id.* The AAO observes that the record does not include documentation such as country conditions information regarding the inability of people in Mexico with limited education to obtain work. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Furthermore, there is nothing in the record that shows the applicant would be unable to contribute to her family's financial well-being from Mexico. The applicant's oldest child suffers from severe allergies and is currently undergoing a five-year allergy treatment in which he receives vaccinations every two weeks. *Statement from the applicant's spouse*, dated January 26, 2006; *See also billing statement and insurance payments*, dated May 12, 2005 to August 12, 2005. The applicant's spouse states that he does not know if his son would be able to get this treatment in Mexico and, even if it were available, he does not know how much it would cost. *Statement from the applicant's spouse*,

dated January 26, 2006. While the AAO acknowledges these difficulties, it notes that the applicant's son is not required to reside in Mexico, nor is he a qualifying relative. While the cost of the applicant's son's treatment in Mexico may have a direct impact upon the applicant's spouse, the qualifying relative in this case, the record does not provide documentation as to what that cost may be and whether the applicant or the applicant's spouse's health insurance would cover such an expense outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse states that he would be unable to take care of his children if he remained in the United States without the applicant. *Statement from the applicant's spouse*, dated January 26, 2006. Although he has family in the United States, he does not have an ongoing relationship with them and would not be able to seek their assistance in caring for his children. *Id.* The applicant has a sister in the United States, but she would not be able to assist in taking care of the applicant's children as she works and has her own family. *Id.*; *Statement from the applicant's sister*, dated January 25, 2006. Counsel contends that the applicant's spouse would be unable to afford the costs of day care for his three children as he will have to maintain a separate household in Mexico for the applicant. *Counsel's brief*, dated February 26, 2008. The AAO observes that both the applicant and her spouse work full-time. *See letters of employment for the applicant and her spouse*. The record fails to explain who currently cares for the applicant's three children while both parents are at work and how this situation would differ with the applicant being in Mexico. The applicant's spouse states that he and his children would miss the applicant greatly if they were separated from her. *Statement from the applicant's spouse*, dated January 26, 2006. This separation, counsel asserts, would result in psychological trauma for the applicant's spouse's children, creating an additional burden on him. *Counsel's brief*, dated February 26, 2008. The AAO notes that the record offers no documentary evidence that establishes the effect of the applicant's removal on her children and the resulting impact on her spouse.

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 being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not demonstrate that the hardship that he would experience as a result of the applicant's removal would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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(a)(6)(C) 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.