

U.S. Citizenship
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FILE:



Office: LOS ANGELES (SANTA ANA)
[consolidated therein]

Date: MAY 21 2008

IN RE:

Applicant:



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:

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for presenting a Form I-586 (Border Crosser Card) in someone else's name. The record indicates that the applicant is married to a lawful permanent resident of the United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident husband, United States citizen daughter, and lawful permanent resident daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 10, 2006.

On appeal, the applicant states that she is "appealing this decision because [she] considered it unjust...Any decision on [her] favor, will be a just act and on [sic] the best interest of justice." *Form I-290B*, filed March 3, 2006.

The record includes, but is not limited to, letters from the applicant's husband and daughter, and a letter from [REDACTED] regarding the applicant's daughter. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

The applicant's Form I-130 reflects that the applicant initially entered the United States without inspection in 1973. On October 4, 1992, the applicant's daughter, [REDACTED] was born in California. On an unknown date, the applicant departed the United States. On April 26, 1997, the applicant attempted to enter the United States by presenting a Border Crosser Card in someone else's name. On April 28, 1997, the applicant was expeditiously removed from the United States. The applicant later reentered the United States without inspection. On August 30, 1997, the applicant married, [REDACTED] a lawful permanent resident of the United States, in California. On October 11, 1997, the applicant's husband filed a Form I-130 on behalf of the applicant. On December 31, 1997, the applicant's Form I-130 was approved. On September 17, 2002, the applicant filed a Form I-601 and an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On September 21, 2004 the Form I-212 was denied. On October 20, 2004, the applicant filed an appeal of the Form I-212 denial. On June 15, 2005, the AAO summarily dismissed the applicant's appeal. On October 18, 2004 the applicant's Form I-601 was denied. On January 14, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 21, 2005, the applicant filed another Form I-601. On February 10, 2006, the district director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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 applicant claims that her United States citizen daughter will "experience the most extreme hardship if [she is] not admitted [sic] and granted [her] lawful [sic] permanent resident status." *Form I-290B, supra*. The applicant's daughter states the applicant takes care of the home and helps her with her schoolwork. *See letter from [REDACTED], dated December 9, 2005; see also letter from [REDACTED] Counselor, Lathrop Technology Magnet School, dated February 24, 2006 (" [REDACTED] has a very supportive mother who does the best that she can to make sure Isabel is in school and complies with her responsibilities.")*. Additionally, in the applicant's Form I-601, filed on December 21, 2005, she lists her daughter, [REDACTED], a lawful permanent resident of the United States, as a relative who would suffer extreme hardship if the applicant is removed from the United States. The AAO notes that [REDACTED] **did not provide a statement or an affidavit regarding the extreme hardship she would suffer if the applicant were removed from the United States**. Furthermore, as noted above, the applicant's daughters are not qualifying relatives for a waiver under section 212(i) of the Act. The applicant's husband states the applicant takes care of the household and gives him encouragement. *See letter from [REDACTED] dated December 9, 2005*. The AAO notes that the applicant's husband did not provide a statement regarding what, if any, hardship he would suffer if he joined the applicant in Mexico. Additionally, the AAO notes that the applicant's husband is a native of Mexico, who spent his formative years in Mexico, he writes and speaks Spanish, and it has not been established that the applicant has no family ties in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment and access to education for their daughter. As a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 lawful permanent resident husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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)(i) 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.