

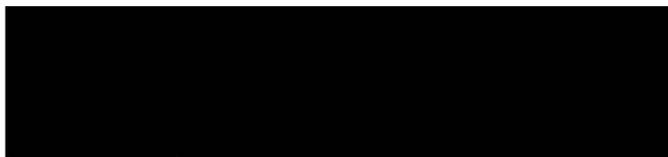
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: EL PASO, TEXAS

Date:

OCT 03 2008

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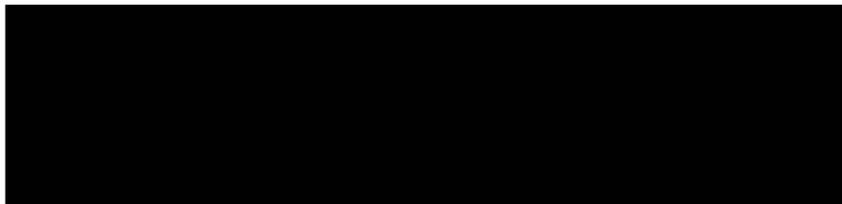
Applicant:



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:



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, El Paso, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through his representative, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed March 8, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On August 22, 2008, the AAO sent the applicant's representative a facsimile requesting evidence of the brief and/or additional evidence, or a statement by the representative that neither a brief nor evidence was filed; however, the AAO received no reply from the applicant's representative. Therefore, the record is considered complete.

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 attempting to enter the United States by presenting a photo-altered Resident Alien Card in someone else's name. The record indicates that the applicant is married to a naturalized 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 his United States citizen spouse and stepdaughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 15, 2006.

On appeal, the applicant, through his representative, requests that the District Director reconsider his decision because of the extreme hardship to his family. *Form I-290B, supra*.

The record includes, but is not limited to, letters from the applicant, his wife, and stepchildren, a letter from [REDACTED] regarding the applicant's wife's medical condition, a marriage license, and a notice of approval of relative immigrant visa petition. 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.

....

- (ii) 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 stepchildren 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 his 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 stepchildren. In the present case, the applicant’s wife is the only qualifying relative, and hardship to the applicant’s stepchildren will not be considered, except as it may cause hardship to the applicant’s wife.

In the present application, the record indicates that the applicant entered the United States without inspection on February 16, 1976. On February 26, 1976, an Order to Show Cause (OSC) was issued against the applicant. On the same day, an immigration judge ordered the applicant deported from the United States, and on February 28, 1976, the applicant was deported to Mexico. On September 15, 1988, the applicant attempted to enter the United States by presenting a photo-altered Resident Alien Card in someone else’s name. On the same day, the applicant was voluntarily removed from the United States. On October 16, 2000, the applicant was issued a USA B1/B2 Visa/BCC (Border Crosser Card). Based on the applicant’s Application to Register Permanent Resident or Adjust Status (Form I-485), the applicant reentered the United States on May 10, 2005, and has not departed since this entry. On May 26, 2005, the applicant’s United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On June 13, 2005, the applicant filed a Form I-485. On November 8, 2005, the applicant filed a Form I-601. On December 16, 2005, the applicant’s Form I-130 was approved. On the same day, the District Director denied the applicant’s Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On February 15, 2006, the applicant’s Form I-485 was denied, and the District Director reissued the Form I-601 denial.

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 himself 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 United States citizen 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's wife states she will suffer extreme hardship if the applicant is removed from the United States. *See letter from [REDACTED]*, dated February 27, 2006. The applicant's wife states she is "sick. [She is] seeing a doctor in Juarez...As of [her] health condition [sic] [she is] not able to work well." *Id.* Dr. [REDACTED] diagnosed the applicant with diabetes. *See letter from Dr. [REDACTED]*, dated February 20, 2006. Dr. [REDACTED] states the applicant's wife has pain in her lower lumbar, and "she can not continue to carry out her work." *Id.* The AAO notes that Dr. [REDACTED] is located in Mexico, and there is no evidence in the record establishing that the applicant's wife could not continue to receive treatment for her medical conditions in Mexico. Further, there is no indication that the applicant's wife has to remain in the United States to receive her medical treatments. The applicant's stepdaughter states she "[does not] want to imagine what would happen to [her] mom and sister if [the applicant] wasn't around and [her] mom had to leave her work." *Letter from [REDACTED]*, undated. The applicant's wife states if she joined the applicant in Mexico, she does not know how she would support her and her daughter. *See letter from [REDACTED]*, *supra*. The AAO notes that the applicant has not demonstrated that his wife could not obtain a job in Mexico. Additionally, the applicant's wife is a native of Mexico, who speaks Spanish, and it has not been established that she has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanies him to Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family. The applicant's wife states she does not "want to live in Juarez because [her] 12 year old daughter is a US citizen. She is planning to go to College. She needs to be here in order to accomplish it if she joined the applicant in Mexico, she does not know how she would support her and her daughter. *Id.* As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant states he supports his wife and stepdaughter "in everything." *Letter from [REDACTED]*, dated February 22, 2006. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his wife'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).

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 United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation if she 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 wife 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 he 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.