



U.S. Citizenship
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FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA Date: **SEP 09 2008**

IN RE: Applicant: [Redacted]

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:

[Redacted]

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 District Director, Los Angeles, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). 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 34-year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is unmarried. He is the beneficiary of an approved relative petition filed on his behalf by his U.S. citizen brother. The applicant's parents are lawful permanent residents of the United States. He presently seeks a waiver of inadmissibility in order to adjust his status to lawful permanent resident and remain in the United States.

The district director determined that the applicant was inadmissible, and that the denial of a waiver would not result in extreme hardship to his lawful permanent resident parents. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that his departure would result in extreme hardship to his family. The appeal is accompanied, in relevant part, by statements from the applicant's parents and siblings, letters from his parents' physicians, and a psychologist's opinion letter.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on his fraudulent use of an alien resident card to gain admission to the United States. The applicant does not dispute this finding. The AAO therefore affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's lawful permanent resident parents. Hardship to the applicant's siblings, or to the applicant himself, is not a relevant consideration.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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 applicant’s parents, [REDACTED] and [REDACTED], are lawful permanent residents of the United States. They are in their 70s, and suffer from medical conditions such as hypertension, high cholesterol, gastro-esophageal reflux, arthritis, cardiac arrhythmia, and anxiety disorder. Their medical conditions are “stable with daily medications and routine clinical evaluations.” *See Physicians’ Letters*. The applicant’s parents reside with one of his nine siblings. *See Statement of [REDACTED]*. Notably, the applicant’s sister states that the applicant is unable to care for his parents due to his job. *Id.* Nevertheless, the applicant’s parents maintain that the applicant, their youngest son, cares for them and provides them emotional support. *See Applicant’s Parents’ Statements*. Dr. [REDACTED], a psychologist, opined that the applicant’s departure from the United States would result in extreme hardship to the family. *See Psychologist’s Opinion Letter*. She explained that the applicant’s parents are elderly, and dependent on the applicant for financial and emotional support. *Id.* She further states that the applicant’s nine siblings are incapable of caring for their parents. *Id.* She noted that the applicant has no relatives in Mexico, and that his departure from the United States would be contrary to the family’s wellbeing. *Id.*

The AAO notes that the application is not accompanied by any financial records establishing that the applicant’s parents depend on him for economic support. The AAO notes that the applicant’s parents are not listed as dependents in the applicant’s income tax returns. As noted above, the applicant’s parents reside with one of the applicant’s nine siblings. There is no indication in the record that the applicant’s siblings cannot collectively provide their parents the care and support currently being provided by the applicant, despite their individual family circumstances. The AAO further notes that the applicant’s parents’ medical conditions are not unusual, and they appear under control with daily medication and routine medical care.

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 parents would face extreme hardship if the applicant is denied the waiver. The record does not contain any evidence establishing that the applicant’s parents’ medical

conditions require the applicant's care, that his siblings could not provide whatever care or support is needed, or that treatment for their conditions is unavailable in Mexico. In sum, the record indicates that the applicant's parents would face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a family member is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's parents due to the potential separation from the applicant rises to the level of extreme.

The AAO further notes the applicant's parents do not indicate whether they would consider relocating to Mexico. In this regard, the AAO first notes that the statute does not require the applicant's parents to relocate. The AAO notes that there is no evidence in the record suggesting that the applicant's parents would face extreme hardship should they relocate to Mexico. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident parents as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. 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.