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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: JUL 12 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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, Director
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 record reflects that the applicant is a native and citizen of Mexico. She was found to be 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), for having procured admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her Lawful Permanent Resident (LPR) spouse. 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 and reside with her LPR spouse and U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated September 26, 2002.

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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record reflects and the applicant admitted that in 1995 she knowingly used a travel document that did not belong to her, to gain admission into the United States by fraud and willful misrepresentation of a material fact. During her interview for adjustment of status the applicant admitted to an officer of the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, (CIS)) that she used her sister's passport to enter the United States. Therefore the applicant is inadmissible under section 2121(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) 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 the present case, the applicant must demonstrate extreme hardship to her LPR spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed 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 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.

On appeal, counsel states that the District Director failed to correctly assess the extreme hardship the applicant's spouse would suffer if the applicant's waiver application was denied and she was forced to depart the country. Counsel submits a brief and documentation regarding Country Reports on Human Rights Practices in Mexico. Counsel states that if the applicant were removed from the United States, would become a single parent, required to care for and support his children. In his brief counsel states that i decides to leave the United States and relocate with the applicant to Mexico his children would suffer hardship due to the lack of adequate educational opportunities. In addition counsel states that if the applicant and her family relocate to Mexico the applicant and would not be able to pursue employment opportunities due to the unemployment rate.

In the present case the record reflects that is a native of Mexico and no evidence was provided besides counsel's statement and documentation regarding country conditions in Mexico that are general in nature and do not address any hardship would experience, to substantiate the claim that ould be unable to find employment and adjust to life in Mexico.

There are no laws that require Mr. Garcia-Mendez or his children to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." 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. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

Counsel states that if the children relocate to Mexico and decides to remain in the United States, he would suffer financial hardship because he would have to maintain two residences.

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.

On appeal counsel refers to caselaw that addresses cases that dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

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 (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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her LPR spouse would suffer extreme hardship if she were removed from the United States. 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.