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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: JUN

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 Interim District Director, Los Angeles, California, 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 U.S. citizen 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 U.S. citizen spouse and child.

The Interim 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 Interim District Director's Decision* dated July 28, 2003.

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 clearly reflects, and the applicant admitted. that on December 5, 2000, she knowingly used an Alien Registration Card (Form I-551) 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 paid $250 in order to obtain a Form I-551, and used that document to enter into 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 U.S. citizen 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 Interim District Director abused her discretion by failing to consider all the factors favorable to the applicant and she misapplied or misinterpreted the law in denying the waiver application. Additionally counsel states that the Interim District Director failed to correctly assess the extreme hardship the applicant's spouse would suffer if the applicant's waiver application were denied and she was forced to depart the country. Counsel submits a brief, affidavits from the applicant and her spouse and other documentation.

Before the AAO can weigh the favorable and unfavorable factors in this case it must first determine if the qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

Counsel states that if the applicant is removed from the United States, would become a single parent, required to care for and support his child. Additionally, counsel states that the applicant's mother-in-law and brother-in-law would suffer extreme hardship if the applicant were not allowed to reside in the United States because she helps out by driving them to doctor's appointments. Counsel states that the applicant's mother-in-law suffers from psoriasis and stress related depression and her brother-in-law is a recovering alcoholic, and that both depend upon the applicant and for cash, emotional support and transportation to doctor appointments when they are unable to operate their vehicles. In the brief counsel further states that will suffer emotionally if his spouse's waiver application is not approved. Furthermore it is stated that if decides to leave the United States and relocate with the applicant to Mexico his child would suffer hardship due to the lack of adequate educational opportunities and insufficient medical facilities.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child, mother-in-law, brother-in-law, or any other relative. Counsel's assertions regarding the hardship the applicant's child, mother-in-law, or brother-in-law would suffer will thus not be considered.

On appeal counsel states that if the applicant and her family relocate to Mexico the applicant would have a difficult time finding employment due to the unemployment rate. The record contains no evidence besides counsel's statement and documentation regarding country conditions in Mexico that general in nature and do not substantiate the claim that the applicant would be unable to find work in Mexico. Counsel further states that enjoys typically American pastimes such as baseball, football and basketball, that he celebrates American holidays, that he would be forced to liquidate his financial holdings in the United States, which include the house in which he lives with the applicant and that his studies would be disrupted if his spouse is removed from the United States and he leaves with her.

There are no laws that require or his child 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).

Additionally, on appeal counsel refers to case-law that addresses cases dealing 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).

In his affidavit states that due to his spouse's potential deportation he is losing sleep, having terrible nightmares, panic attacks and is afraid for his health. There is no independent corroboration to show any medical hardship to or that his health will be jeopardized if he decides to relocate to Mexico with the applicant.

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. 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen 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.