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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, ARIZONA

Date: JUL 19 2005

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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.

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 applicant is a native and citizen of Mexico who was found inadmissible pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented material facts in order to procure a benefit under the Act. The applicant filed an I-485 Adjustment of Status application based on her marriage to a naturalized U.S. citizen. She seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S. with her family.

In a decision dated February 19, 2004, the district director denied the Application for Waiver of Grounds of Excludability (Form I-601), because the applicant failed to demonstrate that her husband would suffer extreme hardship on account of her inadmissibility. On appeal, counsel asserts that the district director abused his discretion in failing to consider all the factors pertaining to the applicant's husband's extreme hardship. Counsel contends that the evidence establishes extreme hardship to the applicant's spouse, and he refers to documentation previously submitted in support of his contention. The AAO has reviewed the entire record and concurs with the district director's determination in this case.

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.

The applicant is inadmissible pursuant to § 212(a)(6)(C)(i) of the Act, because she used the personal information of another individual in order to obtain a permanent resident card, which she subsequently attempted to replace.

Section 212(i) of the Act provides that:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) 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. It is noted that hardship to the applicant herself or her children is not a factor in this analysis, except to the extent that such hardship causes the qualifying relative to suffer in the extreme. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) (citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979)). However, 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, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

On appeal, counsel refers to the psychological evaluation prepared by [REDACTED] based on an interview she conducted with the applicant's spouse on July 26, 2002. [REDACTED] did not indicate that any prior treatment, therapy, or interviews were conducted, nor did she recommend any treatment in connection with the applicant's husband's emotional stress. [REDACTED] found that the applicant's husband was experiencing a major depressive episode, and that he had difficulty functioning both at work and at home. She expressed the opinion that the applicant's husband's depression began when the applicant was informed of her inadmissibility. She stated that she believed the applicant's husband would have "great difficulty finding the will to work and to continue his life here in a satisfying and functional manner."

Counsel points out that the applicant's husband has lived in the United States for over twenty years, and two siblings and his mother reside in Phoenix, Arizona. Counsel notes that the applicant's husband has close ties with his family, and he will undergo hardship if he relocates to Mexico. Counsel adds that a separation from their children as a result of the applicant's removal would also cause the applicant's husband to suffer emotional hardship. In addition, the applicant's husband wrote in his statement dated August 14, 2002 that he had difficulty concentrating at work and problems with his family due to his stress. Nevertheless, because Dr. Howell's letter appears to be based solely on the information the applicant's husband provided during the single one-hour long encounter, and the record contains no other documentation regarding the applicant's husband's prior or subsequent medical or psychological condition, the AAO is unable to conclude that the applicant's husband will experience greater than usual emotional suffering on account of the applicant's inadmissibility.

The record does not contain evidence that the applicant's husband would undergo severe financial hardship in the United States in the applicant's absence. In addition, although the applicant's husband might face a period of readjustment and reestablishment in his native Mexico, the record fails to establish that the applicant's husband would suffer extreme hardship if he relocated to Mexico with the applicant. In sum, the documentation in the record reflects that the applicant has not established 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 she merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to analyze the favorable and unfavorable discretionary factors in the applicant's case.

In proceedings for application for waiver of grounds of inadmissibility under § 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.