U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: A71 651 396 Office: LOS ANGELES, CA Date: NOV 14 2006

IN RE: [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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, the Administrative Appeals Office (AAO) dismissed the appeal and it is now before the AAO on the Motion to Reopen. The Motion to Reopen is granted, the previous decision of the District Director is affirmed, and the application is denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated January 30, 2004.* The AAO summarily dismissed the appeal, but on the Motion to Reopen counsel has provided evidence that a brief was timely filed. The AAO will therefore reopen the proceedings and review the entire record.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated February 27, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit by [redacted] attorney; a statement by the applicant; an affidavit by the applicant's spouse; bank statements for the applicant and her spouse; tax statements for the applicant and her spouse; an affidavit by the applicant's spouse, dated October 16, 2001; an affidavit by the applicant, dated October 15, 2001; an Order of the Immigration Judge, dated December 11, 2001; employment letters for the applicant's spouse; an Immigration and Naturalization Service memorandum, dated February 26, 1999; and a Record of Sworn Statement, dated January 7, 1997. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that although the applicant attempted to enter the United States as a visitor, she admitted at the port of entry that she was living in the United States with her spouse and their U.S. citizen child, and that she was in the process of petitioning for residency. *Record of Sworn Statement, dated January 7, 1997.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 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 of the applicant. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico in 1958. *Affidavit of the applicant's spouse, dated July 5, 2004.* He came to the United States around 1982. *Id.* His mother remains in Mexico. *Form G-325A for the applicant's spouse.* The applicant's spouse stated that if he were to go to Mexico, he and the applicant would lose their home. *Affidavit of the applicant's spouse, dated July 5, 2004.* His business would also be affected. *Id.* The applicant's spouse could not handle having to start all over again, particularly at his age, after all that he has invested and achieved in the United States. *Id.* The AAO notes that there is no evidence in the record as to what type of business the applicant's spouse has or how it would be affected. The record fails to demonstrate that neither the applicant nor her spouse would be unable to find employment in Mexico. The record also makes no mention of any health conditions the applicant's spouse may have. The AAO notes that counsel mentioned the problems that the children would have adapting to Mexico; however, the children are not qualifying relatives and the record fails to explain how the children's struggles would create an extreme hardship upon the applicant's spouse. Although the AAO recognizes these difficulties, when looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse works outside of the home while the applicant takes care of their house and child. *Affidavit of the applicant's spouse, dated July 5, 2004.* Their household would be unable to survive without his income. *Id.* The applicant's spouse does not believe he could care for his children and maintain adequate employment if the applicant were not in the United States to maintain their home. *Id.* The AAO notes that the record fails to demonstrate that childcare is not an available option. Furthermore, the AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. The applicant and her spouse depend upon each other emotionally and financially. *Attorney's brief.* The applicant's spouse could not handle being without his family if they went to Mexico and he remained in the United States. *Affidavit of the applicant's spouse, dated July 5, 2004.*

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, *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. Separation from a loved one is a normal part of the removal process. In this particular case, the applicant has not shown that his emotional hardship is beyond the normal results that one endures. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.