identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

PUBLIC COPY

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: NOV 21 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, MD, 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 to be inadmissible to the United States (U.S.) 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 on December 16, 1996. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to demonstrate that the refusal of the applicant's admission would result in extreme hardship to the applicant's spouse and children. The application was denied accordingly. *Decision of the District Director*, dated February 21, 2005.

On appeal, counsel asserts that the Director's decision is incorrect as a matter of law, the Director failed to consider the evidence submitted in the aggregate and the Director abused his discretion in dismissing the 12 page psychological evaluation submitted to establish extreme hardship. *Counsel's Brief*, dated March 15, 2005.

The record indicates that on December 16, 1996 the applicant presented a fraudulent border-crossing card in an attempt to gain entry into the United States.

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.

A 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. Hardship the alien herself experiences or her children experience due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The AAO notes that the only assertions regarding the applicant's spouse's relocation to Mexico were in the psychological evaluation done by [redacted] states that the applicant's spouse stated that in Mexico he would not be able to find employment in the construction industry and he had no family finances to help with relocation. The applicant did not submit any documentation to support his claims regarding finding employment in Mexico. The applicant must submit documentation to support his assertions. Thus, the AAO finds that the record does not reflect that relocation to Mexico will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel asserts in her brief that financial losses as well as psychological hardships will result if the applicant is inadmissible to the United States. Many times counsel mentions the hardships faced by the applicant's children. The AAO notes, as stated above, that hardships the applicant's children experience due to separation are irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. To show financial ties to the United States, the applicant submitted a copy of the deed for the home bought with her spouse, but did not provide any budgetary documents to show that her spouse would not be able to afford the home if she were removed from the United States.

The applicant also submitted a psychological evaluation by [redacted] states that he interviewed the applicant and her family on several occasions during the course of one week. [redacted] concluded that the applicant was the center of the family and provided care for the children. He stated that the applicant's children would suffer as a result of the applicant's inadmissibility and the applicant's spouse would suffer as a result of experiencing his children's suffering. Although the input of any mental health professional is

respected and valuable, the AAO notes that the submitted report is based on a one week period of interviews between the applicant's family and the psychologist. The record fails to reflect an ongoing relationship with the applicant's family or any history of treatment for the problems suffered by the applicant's family. Moreover, the conclusions reached in the submitted report, being based on a few self-reporting interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] findings speculative and diminishing the report's value in determining extreme hardship.

The applicant also submitted three letters from teachers at her children's school. The teachers stated that the applicant is the primary caregiver for the children and is involved in every aspect of their schooling. Teacher, [redacted] ites a quote from the Institute of Human Services which states that the stronger a child's relationship with a person, the greater the trauma suffered as a result of separation and that the loss of a parent is the most traumatic separation a child can experience. [redacted] states that if the children suffer, the applicant's spouse will suffer as a result. Teacher, [redacted] lso submitted a letter. In her letter, [redacted] states that she has been a teacher for over 25 years and has seen the differences evident between children who come from intact homes such as the applicant's and those who come from dysfunctional homes. She states that she believes that the applicant's spouse would become dysfunctional if she were found inadmissible to the United States. She concludes that the applicant's spouse would suffer extreme hardship as a result. The AAO notes that the teacher's letters do not reflect that the applicant's children would suffer hardship above and beyond what would be expected upon the removal of a family member. Therefore, the applicant's spouse has not shown that he would suffer extreme hardship as a result of the applicant's inadmissibility.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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(i) 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.