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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CLEVELAND (COLUMBUS), OH Date: AUG 14 2007

IN RE: Applicant: [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 application was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

The applicant is a native and citizen of Mexico who 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). The applicant seeks a waiver of her ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that the district director did not evaluate the favorable factors in her case, or the hardship that her husband would suffer if she were denied admission into the United States. The applicant asserts that her husband is a U.S. lawful permanent resident whose life is in the U.S., and who has lived in the United States for over twenty years. The applicant asserts that she and her husband have five U.S. citizen children, that she cares for the children, and that her husband is the sole financial provider for their family. The applicant indicates that her husband would suffer financial and emotional hardship if he remained in the United States with their children. The applicant additionally asserts, through counsel, that section 245(i) of the Act, 8 U.S.C. § 1255(i), waiver provisions apply to her case, and she indicates that this should be weighed as a favorable factor in the adjudication of her Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 application.)

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) provides in pertinent part that:

> An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

Section 245(i) of the Act provides that an alien physically present in the United States without admission or parole may apply for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence upon application and payment of a required sum. The alien's status may be adjusted to that of an alien lawfully admitted for permanent residence if an immigrant visa is immediately available to the alien at the time the application is filed, the alien is eligible to receive an immigrant visa, and the alien is not otherwise inadmissible to the United States.

In the present matter, section 245(i) of the Act waives the applicant's inadmissibility under section 212(a)(6)(A)(i) of the Act for illegal entry. The AAO notes, however, that the district director did not find the applicant to be inadmissible under section 212(a)(6)(A)(i) of the Act. Rather, the district director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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 245(i) of the Act waiver provisions do not apply to grounds of inadmissibility relating to fraud or willful misrepresentation of a material fact in procuring or seeking to procure admission into the United States. The AAO therefore finds that applicant's assertions regarding the applicability of section 245(i) of the Act provisions to the present matter, to be irrelevant. Counsel correctly states that the applicant is entitled to file a waiver of her inadmissibility, however, eligibility under section 245(i) does not automatically dismiss this particular ground of inadmissibility.

The applicant does not contest the finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act. Moreover, the record clearly reflects that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, in that, on or about January 11, 1993, the applicant presented fraudulent lawful permanent resident documentation to U.S. officials in an attempt to gain admission into the United States. The applicant's January 11, 1993, Form I-213, Record of Deportable Alien states that the applicant attempted to enter the United States by presenting an I-551 that her husband obtained for her in Texas, and the applicant pled guilty to violating 8 U.S.C. § 1325, Unlawful Entry, before a U.S. Magistrate.

Section 212(i)(1) of the Act provides that:

> The Attorney General [now Secretary, Department 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.

In the present matter, the applicant's husband is a U.S. lawful permanent resident. He is thus a qualifying relative for section 212(i) of the Act purposes.[1] U.S. citizen or lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's husband.

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[1] Counsel notes on appeal that the district director's February 12, 2006, decision denying the applicant's motion to reconsider indicated that the waiver application was denied because the applicant had failed to show extreme hardship to a U.S. citizen. The AAO finds the error to be harmless, as a waiver of section 212(i) of the Act applies to both U.S. citizen and lawful permanent resident spouses, and it is clear that the district director found the applicant's husband to be a qualifying relative for purposes of section 212(i) of the Act in the initial denial of the waiver and gave no indication that the fact that the applicant's husband was a permanent resident resulted in the initial denial.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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 Board held in *Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant asserts, through counsel, that her husband is a U.S. lawful permanent resident who has lived in the United States for over twenty years. The applicant indicates that she and her husband have been married for over fourteen years and that they have five U.S. citizen children together. The applicant indicates that her husband would miss her emotional and motherly support if they were separated, and that he would suffer financial hardship if the applicant did not care for their children while he works. The applicant does not address whether her husband would suffer extreme hardship if he moved with the applicant and their family to Mexico.

To support her assertions, the applicant submits affidavits from her husband and herself. The applicant also submits copies of her children's school records and certificates, and a character reference letter stating that the author knows the applicant's husband well, and providing a contact number where the author can be reached for questions.

The applicant's husband asserts in his affidavit that he, his wife and their U.S. citizen children (born January 24, 2005, April 10, 2001, January 16, 2000, and twins born January 3, 1994) are a loving and happy family. The applicant's husband asserts that his wife is the primary caretaker for their children, and that he is the sole financial provider for his family. The applicant's husband states further that his life is in the United States and that he and his children would suffer great harm if the applicant were not living with them in the United States. In her affidavit, the applicant asserts that her husband has been in the United States since 1988, that he is a hard worker, that it would hurt her husband very much if she had to leave his side, and that her husband wants to maintain the life they have together in the United States.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, and he remained in the United States. The hardship claims made on appeal lack material detail and are vague in nature, and the record lacks corroborative evidence to illustrate or establish that the applicant's husband would either suffer extreme financial hardship if the applicant were denied admission into the United States, or that he

would suffer emotional hardship beyond that commonly associated with removal if she were denied admission into the United States. In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation. Furthermore, the U.S. Supreme Court 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.

The AAO notes that the record also lacks evidence to establish that the applicant's husband would suffer extreme emotional or financial hardship if he moved with his family to Mexico. Moreover, the record indicates that the applicant's husband is familiar with the language, culture and environment of Mexico as he is originally from Mexico, and he met and married the applicant in Mexico, and the AAO notes that the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.