U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: JUN 15 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 with her U.S. citizen husband.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 13, 2007.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated June 5, 2008.

The record contains a brief from counsel; copies of photographs of the applicant and her family; medical documentation for the applicant; a letter from the applicant's church; documentation regarding the applicant's husband's employment; copies of birth records for the applicant, the applicant's husband, and the applicant's daughter; a copy of the applicant's husband's naturalization certificate; tax records for the applicant and her husband; a copy of the applicant's marriage certificate; copies of the applicant's passport and identification cards; a letter reflecting the applicant's residence, and; information regarding the applicant's entry to the United States using a Form I-551 permanent resident card that belonged to another individual. 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 the applicant entered the United States using a form I-551 permanent resident document that was not her own on or about January 14, 1979. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

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. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

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 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.

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).

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated June 5, 2008. Counsel states that the applicant is the mother of four adult U.S. citizen children, and that the youngest is the daughter of her husband. *Brief from Counsel*, at 1-3, dated July 20, 2006. The applicant married her husband on or about December 1, 1987, and counsel asserts that they have a close bond and have cultivated a strong family. *Id.* at 3.

Counsel explains that the applicant had coronary artery bypass surgery in 2001, yet she has had a good course of recovery. *Id.* at 3-4. Counsel states that the prospect of losing the applicant gives the applicant's husband extreme emotional hardship. *Id.* at 4.

Counsel explains that the applicant and her husband have served as parents to the applicant's four children, and that the applicant's husband would be faced with raising their youngest child alone should the applicant depart the United States. *Id.* at 5-6.

Counsel contends that the applicant's husband would experience anxiety, stress, and psychological torment if the applicant relocates to Mexico due to her heart condition and medical needs. *Id.* at 7-8. Counsel indicates that the applicant's husband will not accompany the applicant to Mexico should she depart, as he took measures to immigrate to the United States from Guatemala and he cannot fathom moving to another country. *Id.* at 8.

The applicant submitted a letter from her physician, [redacted], in which [redacted] stated that the applicant "had Coronary Artery Bypass surgery back in 2001 and since then has had an uncomplicated course." *Letter from* [redacted], undated. [redacted] indicated that "[c]urrently [the applicant] is treated for her hypertension and cholesterol without complaints." *Id.* at 1.

The applicant's husband expressed that he and the applicant have a close family, and that if they are separated it will disrupt their social, spiritual, and moral values. *Statement from the Applicant's Husband*, dated December 22, 2005. He provided that the applicant has worked during her 27 years in the United States and that she has never requested public assistance. *Id.* at 1. He stated that the applicant manages their finances, and that he would experience difficulty if he loses this assistance. *Id.* The applicant's husband stated that he will have to hire other individuals to perform tasks that the applicant currently performs, such as cooking, cleaning, and supervising their daughter. *Id.* He indicated that he and his daughter would struggle to continue to have a positive view of life should they lose the applicant's daily presence. *Id.*

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from remaining in the United States. The applicant's husband contends that he will experience hardship if the present waiver application is denied. Yet, the applicant did not show that her husband would experience hardship should he relocate to Mexico to maintain family unity. The applicant's husband has resided in the United States for a lengthy period and he indicated that he would have difficulty relocating to Mexico. The AAO acknowledges that unwillingly relocating to another country after a long residence in the United States presents hardship. Yet, the applicant has not clearly stated factors to distinguish her husband's potential hardship from that which is ordinarily experienced when families relocate due to inadmissibility.

The applicant bears the burden of showing that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(i)(1) of the Act. In the absence of clear assertions by the applicant, the AAO may not make assumptions regarding hardship the applicant's family members may face should the waiver application be denied. As the applicant has not presented clear evidence or explanation regarding hardship her husband would face in Mexico, the applicant has not shown that he would experience extreme hardship should he relocate there to maintain family unity. Section 212(i)(1) of the Act.

The applicant has not shown that her husband would experience extreme hardship should he remain in the United States and the applicant depart. The applicant's husband expressed that he is close with the applicant, and that he and his daughter would experience emotional hardship should they be separated from her. However, the applicant has not distinguished her husband's emotional hardship from that which is ordinarily experienced when spouses are separated due to inadmissibility. U.S. court decisions have 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.

Counsel contends that the applicant's husband would be faced with caring for his daughter alone in the applicant's absence. However, the applicant has not shown that her 23-year-old daughter requires close parental care such that she would present an unusual burden to the applicant's husband. The applicant's husband indicated that he would be compelled to hire individuals to perform tasks currently performed by the applicant, yet the applicant has not shown that her husband is unable to engage in the identified tasks such as cooking and cleaning.

Counsel contends that the applicant's husband would endure emotional hardship due to the applicant's health condition should she relocate to Mexico and he remain. However, the letter from [redacted] indicates that the applicant's bypass surgery eight years ago was successful and that she has not required treatment for conditions other than hypertension and cholesterol. Thus, the applicant has not shown that she requires treatment that is unavailable in Mexico, or that relocating to Mexico presents an unusual health risk due to her history. While it is reasonable that the applicant's challenges in Mexico would cause her husband emotional consequences, the applicant has not shown that such consequences rise to the level of extreme hardship.

All elements of hardship to the applicant's husband have been considered individually and in the aggregate. Based on the foregoing, the applicant has not provided sufficient documentation to show that her husband will experience extreme hardship, should he remain in the United States or depart with the applicant to maintain family unity. 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)(1) 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.