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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ Date: OCT 01 2009
CDJ 2004 751 700 (RELATES)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

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).**

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Ciudad Juarez, Mexico, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen, the mother of three U.S. citizen sons, and the beneficiary of an approved Form I-130 petition. The OIC found that the applicant had entered the United States by fraud or by misrepresenting a material fact, and is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The OIC also found that the applicant had been unlawfully present in the United States for more than a year, and is therefore inadmissible pursuant section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i).

The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and sons. The OIC also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal, counsel submitted additional evidence and asserted that the evidence of record demonstrates that the waiver application should be approved. Although counsel did not contest the OIC's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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(a)(9)(B)(i) of the Act provides:

> Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,
>
> is inadmissible.

On a Form DS-230 that she signed on July 26, 2005, the applicant stated that she had then lived in Salinas, California since November 1982. Birth certificates in the record show that the applicant's sons were born on February 17, 1986, November 3, 1988, and January 24, 1990, all in Salinas, California. A Form OF-194 Refusal Worksheet in the record indicates that on August 8, 2005 the applicant admitted that she had entered the United States during November 1982 "with fake, false doc." and "stayed to present time." In a declaration dated September 21, 2006, the applicant's husband indicated that the applicant ". . . entered the United States in 1982 using a counterfeit green card" and departed the United States for Mexico on August 8, 2005. Various submissions indicate that the applicant's wife is now in Mexico.

The evidence in the record is sufficient to show that the applicant entered the United States pursuant to counterfeit documentation during November of 1982 and remained in the United States until November 8, 2005, a period greater than one year. The evidence further shows that she then voluntarily departed for Mexico. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) for her use of forged documentation to enter the United States and inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for remaining in the United States unlawfully for more than one year.

Because the applicant has been found inadmissible, the balance of this decision will pertain to whether waiver of her inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(i)(1) of the Act or 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the

applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> 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).

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 his September 1, 2005 letter, the applicant's husband stated that his sons need both of their parents. He stated that his wife was in charge of taking the children to school, overseeing their attendance, and preparing meals. The applicant's husband also stated that without his wife's income he is having difficulty balancing the family budget and he may be obliged to seek public assistance. Finally, he stated that going to live in Mexico would represent a dramatic change for his children and their medical care and education would suffer.

A letter, dated April 28, 2006, from the Salinas Union High School District states that the applicant's youngest son, [redacted], was expelled from school on April 25, 2006.

The record contains a letter, dated September 8, 2006, from [redacted], a Parent Educator at the Salinas Adult School. That letter states that the applicant's husband and [redacted] were enrolled in a Families in Control class that began on June 29, 2006 and was to run nine weeks, but that prior to the last class the applicant's husband called her and stated that [redacted] would be unable to attend the final class because he had been placed in Juvenile Hall. [redacted] stated that the absence of his

mother in the family home was one reason for [redacted] "acting out," but did not explain how she reached that conclusion.

The record contains a letter, dated September 11, 2006, from an acquaintance of the applicant, her husband, and her sons. That letter notes that the applicant has been in Mexico since August of 2005, that the applicant's husband has been working two jobs and caring for his sons, and that the youngest son has been in trouble at school. Finally, it states, "[The applicant's extended absence from the family is causing a hardship and perhaps even long[er] lasting consequences for [the] youngest son."

The record contains a letter, dated September 18, 2006, from a present or former coworker of both the applicant and her husband. That letter states that the applicant's husband and children are suffering from her absence, but provides no more concrete description of the applicant's husband's resultant hardship.

A letter, dated September 20, 2006, from the Presiding Overseer and Congregation Secretary of the applicant's church states that the applicant's absence has had a tremendous impact on her family, especially her two younger sons. It states that they have drawn away from the congregation and implies that they may be involved with drugs or gangs. It then states that involvement in drugs or gangs may be a direct effect of the applicant's absence, but offers no evidence in support of that assertion.

The record contains a declaration, dated September 21, 2006, which was referred to above. He stated that the applicant is his confidant and adviser and that he misses her. He stated that his three children have never been away from their mother previously, and that all of them have suffered from depression in her absence. He noted that the youngest has been in legal trouble and has started using drugs.

On the Form I-290B appeal counsel stated, "The applicant has demonstrated that her United States husband and children will suffer extreme hardship if she is not admitted to the United States."

In the brief submitted to support that appeal, counsel asserted that the OIC should have taken into consideration that the applicant's offense of entering the United States using forged documentation occurred 24 years ago, and that she voluntarily divulged that she had committed that offense.

The immediate material consideration before the AAO is whether the evidence demonstrates that failure to grant the waiver application would occasion extreme hardship to the applicant's husband. How long ago the applicant committed her offense and whether she voluntarily admitted to its commission are irrelevant to that consideration. Counsel submitted no argument pertinent to that immediate material consideration.

The applicant's husband has stated that, without his wife's assistance, he is having trouble paying his bills and may require public assistance. Some evidence in the record indicates that the applicant was working in the United States. The record contains no pay stubs, tax returns, or Form W-2 Wage and Tax Statements, or any other evidence pertinent to the amount she earned during any period.

Further, the record does not contain any evidence pertinent to the applicant's husband's income, and does not contain a budget or other evidence of his recurring expenses.

Although the loss of any amount of income results in some degree of hardship, the AAO is unable, without additional evidence, to determine that, if the waiver application is denied, the financial hardship that would result to the applicant's husband, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Some evidence suggests that the applicant's absence has caused her husband and children to suffer psychological or emotional hardship. The applicant's husband stated that all three of his sons have suffered from depression. He notes that his youngest son has been expelled from school and has been in legal trouble that included a referral to juvenile hall.

The record contains no evidence from psychiatric or psychological professionals, however, to support that the applicant's children are suffering from depression, or that their depression, is caused by the applicant's absence, or would be cured or assuaged by the applicant's return.

In her September 8, 2006 letter, [redacted] bluntly stated that the applicant's absence is one of the causes of the youngest son's "acting out." [redacted]'s professional qualifications were unstated. Whether [redacted] is so qualified that her opinion should be accorded great evidentiary weight is unclear. Further, the depth and duration of her professional involvement with the applicant's youngest son is unknown. Even if she is sufficiently credentialed, whether her knowledge of the applicant's youngest son forms a sufficient basis for her opinion that the applicant's absence contributed to her son's delinquency is unknown.

Further, although the applicant's husband would have suffered some degree of hardship because of the alleged depression of his three sons and the demonstrated academic and legal trouble of his youngest, none of the evidence speaks to the degree of hardship that he thus suffered. There is no evidence from a professional in the field of psychology, psychology, or social work to suggest that the emotional and psychological hardship that the applicant's husband is suffering, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission and he remains in the United States, either with or without his sons. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising from the separation caused when a spouse is removed from the United States.

The remaining consideration is whether the applicant's husband could move to Mexico, with or without his sons, to be with the applicant without causing the applicant's husband extreme hardship. The applicant's husband stated that for the children to move to Mexico would limit their access to health care and education. There is no evidence in the record that the applicant's sons are in ill

health and require more than moderate preventative health care. The record contains no evidence that the degree of health care that they require cannot be provided in Mexico.

Further, the applicant's sons are all 19 years old or older. There is no indication in the record that any of the three is considering extending his education beyond high school. Whatever aspirations toward additional education any of the three may have, there is no evidence that it the additional education cannot be acquired in Mexico.

Even if the applicant's sons were denied some desirable degree of education or health care because of relocating in Mexico, the record does not demonstrate that it would cause hardship to the applicant's husband which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

The applicant's husband did not discuss the possibility that he might move to Mexico with his sons so that they could be with the applicant. The applicant's husband did not discuss any hardship that he would experience as a result of that arrangement and provided no evidence on that point. The record does not demonstrate, nor even suggest, that the applicant's husband is unable to move to Mexico to be with his wife without suffering extreme hardship.

Finally, as was noted above, the applicant's sons have all reached their 19th birthdays. No reason is given in the record that they may not be self-supporting. Although one of the sons has had legal problems, the record contains no evidence that the applicant's husband might not join her to live in Mexico, while some or all of her sons remain in the United States.

The record suggests that the applicant has loving and devoted family members who are extremely concerned about the applicant's absence from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship

caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. **Here, the applicant has not met that burden. Accordingly, the appeal will be** dismissed.

ORDER: The appeal is dismissed.