

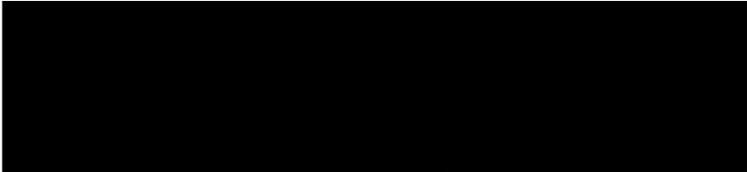


U.S. Citizenship  
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HL2

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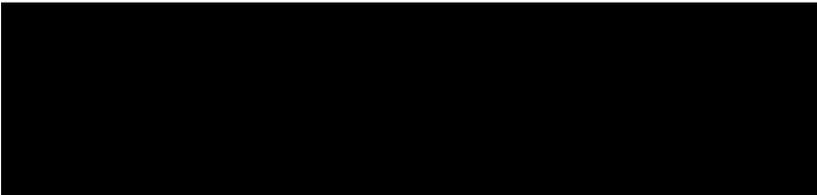
Date: DEC 01 2006

IN RE:



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

ON BEHALF OF APPLICANT:



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 district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico who entered the United States on August 21, 1995, using a fraudulent passport, and applied for adjustment of status on July 16, 2001. In order to remain in the United States with her U.S. citizen (USC) spouse and children, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for her inadmissibility under section 212(a)(6)(C)(i) for having sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that [REDACTED] was ordered deported on August 24, 1995 for making an oral claim to U.S. citizenship to an immigration officer. As a result of this misrepresentation, the director found the applicant to be inadmissible to the United States. *District Director's Decision*, dated June 30, 2004. The district director also found 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)*. *Id.*

On appeal, counsel submits a brief, a list of [REDACTED] USC and legal permanent resident (LPR) relatives, and other previously submitted documents.

The record includes the following: hardship statements from [REDACTED] [REDACTED] naturalization certificate; the birth certificates of their two U.S. citizen children, [REDACTED] age 8, and [REDACTED] age 4; letters attesting to [REDACTED] good character from friends and family; the couple's marriage certificate; the deed to the couple's house; and income tax records from 1998-2000. The AAO reviewed the entire record in arriving at a decision on the appeal.

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) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute, nor is hardship to her USC children. If extreme hardship to a qualifying relative, in this case the applicant's husband, is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 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 list of non-exclusive factors relevant to determining whether an applicant 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.

It is clear from the record that the applicant and her spouse care very much for each other and their children. They have not, however, shown why they could not all live together in Mexico if the applicant's application for admission is denied. Although [REDACTED] refer to economic, social, and political problems in Mexico that would make it extremely difficult for the couple to earn a living there, the record does not contain evidence on country conditions for Mexico or how these conditions would affect the applicant and her family. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if the applicant has submitted documents to show that he and his wife would have difficulty finding work in Mexico, this fact alone would be insufficient to show that their relocation to Mexico would result in extreme hardship to her husband.

Other than statements from the applicant and her husband, in which they note their love for and emotional attachment to each other, (*See Affidavits of [REDACTED] and [REDACTED]*), and letters from friends and family, no objective evidence was submitted to supplement [REDACTED] claim of extreme hardship. Although it is clear that her husband would suffer emotionally, if she returned to the Mexico and he remained here, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning 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.

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 hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if he remains in the United States separated from the applicant, their situation, based on the limited documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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(h) of the Act, the burden of proving eligibility rests 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.