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U.S. Citizenship
and Immigration
Services

H2



FILE: [REDACTED] Office: CHICAGO DISTRICT OFFICE

Date: **JUN 22 2006**

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)

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 waiver application was denied by the District Director, Chicago. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was found to be 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), for having procured admission into the United States 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 spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 5, 2002.

On appeal, counsel for the applicant stated that the applicant denied that she committed fraud. *Form I-290B*, dated July 31, 2002. Counsel also requested 30 days after receipt of the record in which to submit a brief. On May 16, 2006 the AAO requested a copy of that brief. There has been no response to that request. The record is, therefore, considered complete. The record contains statements from the applicant, including notes taken during her interview with an immigration officer on February 11, 2002, her husband's naturalization certificate, dated August 22, 2001, her children's birth certificates, and U.S. income tax returns for 1999 and 2000. The entire record was reviewed and considered in rendering this decision.

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.

8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(i) of the Act provides:

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

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that the applicant entered the United States illegally in March 1999 at San Isidro, California. The applicant stated that she entered the United States illegally to join her husband and son and daughter. *Application for a Waiver of*

Ground of Excludability (Form I-601), dated February 11, 2002, the date of the applicant's adjustment interview. According to interview notes taken at the adjustment interview and signed by the applicant at that time, the applicant explained that she had obtained "a false Green Card" with her photograph and date of birth, but with the name of Nancy Moran, her cousin, and that she showed this card to the immigration officer to enter the United States. Though counsel for the applicant stated in the Notice of Appeal that the applicant denies that she committed fraud in order to enter the United States in March 1999, counsel failed to support this statement with any evidence. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The burden of proving admissibility rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met this burden. The record contains sufficient evidence, including the applicant's admission of illegal entry, that the applicant did in fact make a material misrepresentation by presenting a fraudulent U.S. Resident Alien Card to gain admission to the United States, and no evidence to the contrary is on record. The District Director accordingly correctly determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) 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, in this case the U.S. citizen husband of the applicant, 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.

"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).

In this case, the record reflects that the applicant's husband is a naturalized citizen who was born in Guatemala in 1974. He became a U.S. citizen in 2001. His father and mother are listed on the applicant's I-601 as having "resident" status in the United States. The applicant and her husband were married in Guatemala in 1995 and have resided in the United States since February 1996. They have two children who

were born in the United States, in 1996 and 1999 respectively. The applicant's parents live in Guatemala according to the most recent evidence on record.

The most recent financial documents on the record were submitted in connection with the *Affidavit of Support* (Form I-864). They show that in 1999 and 2000, the applicant's husband was the sole source of income for the family. The applicant listed her occupation as housewife from December 1995 to March 2001. There is no more recent evidence on the record, and it is difficult for the AAO to accurately make a hardship finding in the absence of such evidence.

The applicant stated on her *Application for a Waiver of Ground of Excludability* (Form I-601), dated February 11, 2002, that Guatemala "is a country [where it is] very difficult to have an honest and decent life . . . [and the United States] has a lot of opportunities for us to do something, like [provide] a better education for us and our children." She added that she had no reason to return to Guatemala because her husband and children live in the United States. Other than these statements and financial records, there is no information on the record that would be relevant to a hardship determination by the AAO.

Other than the applicant's opinion regarding the difficulty of life in Guatemala, the record is silent as to country conditions and their impact, if any, on the ability of the applicant's husband to relocate to Guatemala to avoid separation from the applicant. There is no indication that the applicant's husband would suffer from lack of economic support if he chose to remain in the United States or that he would be unable to adjust to living in Guatemala if he chose to accompany the applicant. It appears that the applicant's husband faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

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 spouse 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 inconvenience and hardship experienced by the families of most individuals who are deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of deportation 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(i). 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 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.