



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: MAY 30 2006

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, 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 is married to a U.S. citizen and seeks to adjust her status to that of lawful permanent resident (LPR). She was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (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 and seeks a waiver of inadmissibility pursuant to § 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 their children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. On appeal, counsel contends that the record establishes extreme hardship to the applicant's husband. Counsel also stresses hardship factors affecting the applicant and her U.S. citizen son and stepdaughters. The AAO notes that hardship the alien herself or her children experience upon her removal is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband.

The record includes, among other documentation, a brief on appeal, declarations by the applicant and her husband, and a psychological evaluation of the applicant, her husband, and their children. The AAO has reviewed the entire record in rendering this decision, and it has determined that the district director did not err in his decision to deny the waiver application.

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 made a willful misrepresentation of a material fact by presenting an I-551 card that she obtained from a "coyote" at the border in order to gain admission to the United States; therefore, she is inadmissible. In order to obtain a waiver of this bar under § 212(i) of the Act, the evidence must first show that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship to the qualifying relative 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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant. The applicant's husband wrote in his statement dated March 30, 2004 that he fears he would not be able to find a job in Mexico as he does not speak Spanish. He also wrote, however, that he is unemployed, and the record reflects that he receives a monthly stipend of \$2500 from his Native American tribe. Thus, based on the evidence, it is not clear that the applicant's husband would need to work in Mexico or that he would be unable to find any employment in that country. Moreover, 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 applicant's husband also stated that he would only be able to take one of his four biological children with him to Mexico, and he would not like to lose his involvement in his children's lives. Only one of his biological children currently lives with the applicant, part-time, and the record does not reflect to what extent he currently takes part in his other children's lives. Therefore, the AAO cannot assess the impact of a separation from his biological children on the applicant's husband. The applicant and her husband both expressed concern regarding the availability of medical treatment in Mexico; however, there is no evidence that the applicant's husband suffers from any physical complaint that requires specific treatment.

Counsel refers to the psychological evaluation performed by Priscilla Marquis, Ph.D. on March 15, 2004. Dr. Marquis interviewed the applicant and her family members for two hours and concluded that the applicant's husband suffers from some depressive symptoms but does not exhibit any medical conditions. Dr. Marquis noted that the applicant's husband reported that he was an alcoholic in complete remission, and she stated that he was at risk of relapse should the applicant be removed. Dr. Marquis did not describe the basis for the latter conclusion, nor did she make any specific recommendations for treatment. The evidence on the record is insufficient to support the conclusion that the applicant's husband requires the applicant's presence in order to maintain sobriety and/or mental health.

The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse will endure greater distress than other similarly situated persons as a result of separation from the applicant. The applicant's husband's situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. 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), 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.