

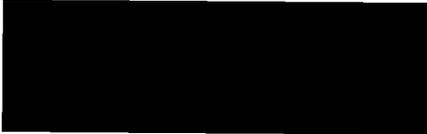
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U.S. Citizenship
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FILE:  Office: LOS ANGELES(SANTA ANA) Date: **NOV 14 2006**

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 Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director found the applicant, [REDACTED] a 70-year old native and citizen of Mexico, to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having procured admission into the United States by fraud or willful misrepresentation of a material fact.

The record reflects that Mr. [REDACTED] entered the United States with a tourist visa when he actually resided in the United States. As a result of this misrepresentation, the OIC found him to be inadmissible to the United States. *OIC's Decision*, dated March 9, 2005. The OIC 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.*

Counsel does not appear to contest the OIC's determination of inadmissibility; on appeal, however, counsel asserts that Mr. [REDACTED] spouse will suffer extreme hardship if his Form I-601 is denied. *Brief, dated March 9, 2005.*

In addition to the above mentioned brief, the record includes and the green card of Mr. [REDACTED] wife. The AAO reviewed the record in its entirety before reaching its 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.

A section 212(h)(1)(B) 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 himself is not considered under the statute, except in relation to how it affects the qualifying relatives, in this case, the applicant's USC father and legal permanent resident (LPR) mother.

If extreme hardship to a qualifying relative, in this case the applicant's wife, 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.

“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).

Counsel asserts that Mr. [REDACTED] wife will suffer extreme hardship if Mr. [REDACTED] is not admitted to the United States because of her high blood pressure. The AAO does not wish to diminish the seriousness of Mrs. [REDACTED] health problems, but notes that counsel submitted no documents to show that Mrs. [REDACTED] even suffers from high blood pressure. Nor did counsel submit documentation to show that Mrs. [REDACTED] could not receive medical treatment for this condition in Mexico. Counsel assert that the director erred in not considering Mrs. [REDACTED] medical condition but did not submit any letter from a doctor explaining what conditions she suffers from and how her husband’s absence or her relocation to Mexico would affect Mrs. [REDACTED] and result in extreme hardship to her. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Counsel asserts that Mr. [REDACTED] wife will suffer extreme psychological hardship if Mr. [REDACTED] is not admitted to the United States but submits no objective documentary evidence to support Mrs. [REDACTED] claim of extreme emotional and psychological hardship. 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)).

Although it is clear that his wife would will suffer emotionally, if Mr. [REDACTED] is not admitted to the United States, 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 Mr. [REDACTED] wife, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does not 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 Mr. [REDACTED] wife faces extreme hardship if Mr. Martinez 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that Mr. Hassan's deportation would cause to his spouse and children). 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* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS*, *supra*, at 468.

In this case, although the applicant's wife will endure emotional hardship if she remains in the United States separated from the applicant, or if she joins him in Mexico and is separated from her family in the United States, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.