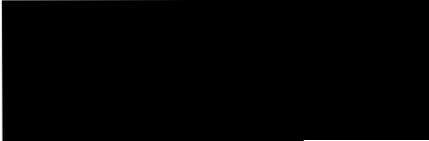


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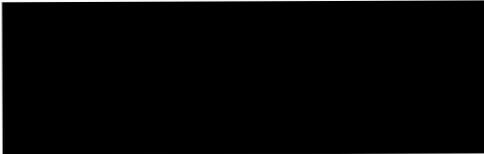
Date: NOV 14 2006

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 applicant, [REDACTED], is a native and citizen of Mexico who attempted to enter the United States on March 17, 1997, using a fraudulent passport, and applied for adjustment of status on October 14, 1999. In order to remain in the United States with her lawful permanent resident (LPR) spouse and U.S. citizen (USC) 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 on March 17, 1997, Mrs. [REDACTED] attempted to enter the United States by presenting false information to an immigration officer, was turned away, and reentered without inspection the same day. As a result of this misrepresentation, the District Director found the applicant to be inadmissible to the United States. *District Director's Decision*, dated October 7, 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, and several documents not previously submitted. The record includes the following: hardship statements from Mr. and Mrs. [REDACTED]; a copy of Mr. [REDACTED] green card; the birth certificates of their three U.S. citizen children, [REDACTED], age 13, [REDACTED], age 11, and, [REDACTED], age 10; letters attesting to Mrs. [REDACTED] good character from friends and family; the couple's marriage certificate; proof that the couple owns two houses; and income tax records from 1996-2000. 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 the applicant herself experiences upon denial of her application for admission is not considered in section 212(h) waiver proceedings. Hardship the applicant's children experience is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant's LPR husband.

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, supra* at 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 the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

Counsel asserts that Mr. █████ son █████ suffers from a learning disability and could not receive the special education that he receives here in the United States if he relocated to Mexico. Counsel asserts that even if it were available in Mexico, it would be prohibitively expensive for the █████ family. The Act states that, for a waiver to be granted, the applicant must establish that denial of the application would result in extreme hardship to his LPR spouse. Hardship to his children cannot be considered except in relation to how it would affect Ms. █████. The documentation submitted relates to █████ learning disability but does not contain an explanation of the connection between the denial of Mrs. █████ waiver application and █████ learning disability, and how this would result in extreme hardship to Mr. █████.

Mr. and Mrs. █████ assert that their son will not have access to a special education program if the family moves to Mexico because these programs are unavailable to all but the wealthy. First, this would result in hardship to █████, who is not a qualifying relative in these proceedings. Second, while existing economic and educational conditions in Mexico are considerations in determining extreme hardship, counsel did not submit any documentation regarding these conditions in Mexico and how those conditions would affect Mr. █████. 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)).

Other than a statement from the applicant's husband, in which he notes his love for and attachment to his wife, (*See Mr. [REDACTED]'s hardship statement*), no objective evidence was submitted to supplement Mr. [REDACTED]'s claim of extreme emotional hardship. Although it is clear that her husband would suffer emotionally, if she returned to Mexico and he remained here, or if he left the United States to be with her, 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 or relocation on Mr. [REDACTED] while difficult, would 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 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 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.