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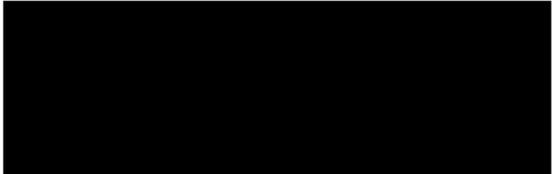
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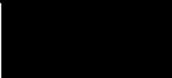
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

AUG 28 2007

IN RE: Applicant:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico and 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 Mexico who was found to be inadmissible to the United States under section 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 entry into the United States by fraud or willful misrepresentation. The record indicates that in March 2004, the applicant misrepresented herself at a port of entry by attempting to enter the United States using another individual's immigration documents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

In support of this appeal, the applicant submits an attachment to the Form I-290B, Notice of Appeal, dated December 6, 2005; a statement from the applicant's spouse, dated December 6, 2005 and evidence of his U.S. citizenship; evidence of the applicant's spouse's terms and conditions of probation; a copy of the applicant's child's birth certificate and translation; proof of the applicant's spouse's parent's lawful permanent residence; and a copy of the applicant's marriage certificate. The entire record was reviewed and considered in rendering this 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship 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 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.

The applicant's parents are lawful permanent residents of the United States. The record indicates that the applicant's spouse cares for both of his parents. As the applicant's spouse states, "...My father [REDACTED] and my mother [REDACTED], both are Lawful Permanent Residents and both are sick, both are diabetics. I live with my parents and help them with the payment of the house. If I am forced to follow my wife [the applicant] to Mexico, my parents will suffer a negative impact in their lives, because I am their support and their company..." *Declaration of [REDACTED]* December 6, 2005.

The record also contains documentation that establishes that the applicant's spouse is currently on probation, effective April 8, 2005 for a five year period, with the County of Los Angeles. The probation documents provided confirm that the applicant is to remain in Los Angeles County and report to the Probation Officer as instructed; the documents confirm that if the applicant fails to report, the probation may be revoked. *Instructions to Adult Probationer*, dated April 8, 2005.

Based on a thorough review of the record, we have determined that extreme hardship would exist were the applicant's spouse to accompany the applicant to Mexico based on his parent's dependence on him and on the conditions imposed on him by the County of Los Angeles Probation Department. It would not be feasible for him to accompany the applicant to Mexico. Thus, the applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse.

However, the record fails to establish that the applicant's spouse will suffer extreme hardship were the applicant to remain in Mexico. There is no documentation establishing that the applicant's spouse's financial, emotional or psychological hardship would be any different from other families separated as a result of immigration problems. No evidence has been provided to establish what specific negative conditions the applicant would encounter in Mexico which would lead to extreme hardship to the applicant's spouse. For example, the applicant does not explain why she would be unable to be employed in Mexico, thereby providing for herself a safe environment, and thus relieving the concerns outlined by the applicant's spouse.

The applicant's spouse references that their child "...is in the process to be registered as a U.S. citizen born overseas...My little girl will be forced to stay in Mexico and be deprived of all her benefits as a U.S. Citizens [sic] if her mother is not allow [sic] to adjust...I believe that my child will lose all hope of achieving a better life for herself...Our child needs the loving support and care that a dual parent home can provide..." *Id.* at 1-2. Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. It has not been established that the child's residence in Mexico with the applicant will cause extreme hardship to him, financially, emotionally or psychologically. In the alternative, the record fails to address why the applicant's child is unable to reside with the applicant's spouse in the United States.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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 aliens being deported.

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 will face extreme hardship if the applicant remains in Mexico. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were unable to return to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to determine whether the officer in charge erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.