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U.S. Citizenship
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AZ

FILE:

Office: PHOENIX, AZ

Date:

AUG 29 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:

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 Acting District Director, Phoenix, Arizona, and 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 was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking 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). The acting district director denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Acting District Director*, dated November 9, 2005. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record conveys that the applicant presented to U.S. immigration officials counterfeit identification documents using the name Everado Villa-Lopez so as to gain entry into the United States. *Federal Bureau of Investigation Record*, dated September 19, 2001. The evidence in the record supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. By presenting to U.S. immigration officials counterfeit identification documents, the applicant sought to procure entry into the United States by fraud and the willful misrepresentation of a material fact.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 the bar to admission resulting from 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 to the applicant is not a consideration under the statute; and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's wife, [REDACTED] who is a U.S. citizen. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's spouse must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel states that the applicant has demonstrated that his removal from the United States would cause extreme hardship to his spouse. Counsel states that the applicant presently earns the majority of the family's income. According to counsel, due to the applicant's 14-year absence from Mexico and his lack of skills and education, the applicant may not be able to support himself in Mexico and his family in the United States. Counsel asserts that the applicant's spouse would have to support the three children living in the United States and her husband in Mexico. According to counsel, the applicant's wife works part-time, earning \$7 per hour and the family's household expenses exceed \$2,000 per month. Counsel states that the applicant's spouse relies on him to transport her to work because of an automobile accident. Counsel states that in all likelihood

the applicant's wife would either have to seek governmental support for the family or work a second job. Counsel claims that the applicant's wife, who is 23 years of age, would become a single parent in the absence of her husband, providing emotional support, discipline, and education to the children; if she worked a second job, she would not be able to provide parental guidance. Counsel states that the AAO should take judicial notice of the severely depressed economic conditions in Mexico, which is the cause of why Mexican citizens seek subsistence employment in the United States. According to counsel, the totality of the hardship that is placed on the applicant's spouse, combined with the hardship on his children, which is inherently transferred to his wife, is extreme.

The record contains income tax returns; W-2 statements; letters from employers, an affidavit from [REDACTED] birth certificates, a marriage license, a doctor's letter, mortgage information, a letter from [REDACTED], and other documents.

The doctor's letter, dated September 12, 2002, stated that [REDACTED] "has had significant problems with panic attacks, and presently her only source of support and travel is her significant other, [REDACTED]."

[REDACTED] letter stated that she has three children and is pregnant. She states that she met her husband when she was 15 years old and she and her daughter have lived with him since then. According to [REDACTED] the applicant loves his stepdaughter like she is his own child. [REDACTED] states that she suffers from nerves and cannot drive so she and the children rely on her husband for transportation. She indicates that she does not know what she would do without her husband.

[REDACTED] states the following in his affidavit. He came to the United States in 1991 as a young man to find work and help his family. His wife suffers from panic attacks ever since her last accident and she cannot drive to work or the store, so he drives her. If he is deported, his family would have tremendous emotional and financial suffering.

This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, therefore decisions from the Ninth Circuit will be given appropriate weight in this proceeding.

The Ninth Circuit has stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has U.S. citizen children and a U.S. citizen stepdaughter is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found

that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The income tax records, W-2 Forms, and wage statements indicate that [REDACTED] is the principal income earner of the family. In 2001, he earned \$14,438 and his wife earned \$7,491. The record contains a monthly breakdown of the family's household expenses, which are shown as totaling \$2,450. The submitted evidence clearly establishes that [REDACTED] relies on her husband's earnings to meet family expenses.

The applicant and his wife are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the record. After careful consideration, it finds that the situation of [REDACTED], if she remains in the United States without her husband, rises to the level of extreme hardship as defined by the Act. She would be left to raise four children without her husband.

The AAO will now consider whether the applicant's wife would experience extreme hardship if she joined the applicant in Mexico.

The conditions in Mexico, the country where the applicant's wife would live if she joined him, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Although counsel states that the AAO should take judicial notice of the economic conditions in Mexico, court decisions have shown that the difficulties [REDACTED] may experience in obtaining employment in Mexico and the general economic conditions in that country are insufficient to establish extreme hardship. *E.g.*, *Ramirez-Gonzales v. Immigration and Naturalization Service*, 695 F.2d 1208, 1211-13 (9th Cir.1983) (upholding BIA finding that [REDACTED] testimony and unsupported allegations are insufficient to establish inability to find employment in Guatemala); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

While the applicant's wife states that she has panic attacks, there is no evidence in the record establishing that this is a severe health condition and that medical treatment is unavailable in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship if the applicant's spouse were to accompany him to Mexico. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.