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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CHICAGO, ILLINOIS

Date: DEC 04 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant [REDACTED], 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 seeking admission into the United States by fraud or willful misrepresentation. Ms. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding that [REDACTED] failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated December 15, 2004.

The AAO will first address the finding of inadmissibility under 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 sworn statement, dated October 21, 2003, in the record reflects that the applicant sought to gain entry into the United States by presenting a greencard in someone else's name to an immigration officer. Based on this admission, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that 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.

The applicant seeks a waiver of inadmissibility. 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 and his children 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, who in this case is the applicant's wife. 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).

The record contains, in addition to other documents, affidavits from the applicant's mother and father and a letter from [REDACTED], a psychologist.

The affidavit from the applicant states that she and her husband have three children. She indicates that she is employed full-time, earning \$8.25 an hour and that her job provides health insurance for the family. She states that her husband has been diagnosed with uncontrolled diabetes and requires medication. Ms. [REDACTED] states that they own a townhouse, she helps pay the family's household expenses, she cares for and transports the children, and she prepares the family's meals. She states that they have nothing in Mexico.

In his affidavit, Mr. [REDACTED] conveys that he has been married for 12 years and he and his wife are raising their children in a safe environment. He states that he depends on his wife and that she provides their medical insurance. Mr. [REDACTED] states that he has uncontrolled diabetes for which he has doctor's visits and that his wife is in charge of his diet. He states that his life is in the United States and that he would not be able to provide for his family in Mexico, where he has not lived for 20 years. He indicates earnings of \$14.50 an hour with DYNACO USA as an electric technician.

In addition to other documents, the record contains copies of birth certificates, wage statements; W-2 Forms; employment letters; letters from the applicant's children, from friends, from a teacher; articles and other documents about Mexico; a deed; and photographs.

The letters from [REDACTED]'s friends attest to the closeness of the Ibarra family and her good character. The letters from [REDACTED]'s children convey their need for their mother.

Extreme hardship to the qualifying relative must be established in the event that he joins the applicant; and in the alternative, that he 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.

"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).

The present record is sufficient to establish that the applicant's husband would endure extreme hardship if he joined the applicant in Mexico.

The conditions in Mexico, the country where the applicant's husband would join her, 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).

Mr. Ibarra claims that he would not be able to find employment in Mexico that would support his family. The record contains the U.S. Department of State's country report on Mexico, which describes the social conditions in Mexico. Exhibit M has an overview of Mexico's socioeconomic, political, health, and demographic conditions. The report conveys that in 1995, about 60.4 percent of the population lived in poverty, and that the greatest proportions of the impoverished have high numbers of the indigenous population. The record conveys that Mr. [REDACTED] is employed as an electric technician and his wife as a machine operator. Counsel states that Mr. [REDACTED] would lose his \$30,160 salary if he moved to Mexico.

The record reflects that the applicant's family has health insurance through her employer. Mr. [REDACTED] states that he has uncontrollable diabetes and therefore requires medical care. Exhibit R, the article in the record about diabetes in Mexico, describes the economic cost of diabetes in Latin America and the Caribbean. Exhibit Q describes diabetes as Mexico's leading cause of death and conveys that healthy habits prevent diabetes. The AAO notes that the record contains a letter, dated August 16, 2004, which indicates that Mr. [REDACTED] has uncontrolled diabetes. Counsel states that relying on the health care system in Mexico is extreme hardship. The Ibarra family has medical and dental insurance through the applicant's employer, which they will not have in Mexico.

Counsel states that Mr. [REDACTED] would lose his home in the United States if he moved to Mexico. He further states that Mr. [REDACTED] is completely integrated into the American lifestyle, he lived more than half of his entire life in the United States, he built his career here, and he has three children here. Counsel states that Mr. Ibarra's integration exceeds that which the court found in *Matter of Kao-Lin*, 23 I&N Dec. 45 (BIA 2001).

The record contains articles about the educational system in Zacatecas, Mexico, which is the birth and wedding place of Mr. and Ms. [REDACTED]. The applicant's children are 15, 13, and 10 years old. With regard to the education of a child, in *Prapavat v. I.N.S.*, 638 F.2d 87, 89 (9th Cir.1980), the Ninth Circuit stated that the hardship to the petitioners' United States citizen daughter, who was about five years old at the time of the Board's decision and is now almost six, must be considered. It stated that:

The child, born in this country, has spent her entire life here. She is enrolled in school, a factor of significance. *See, e. g., Wang*, 622 F.2d at 1348 n.7; *Jong Shik Choe v. I. N. S.*, 597 F.2d 168, 170 (9th Cir. 1979); *Urbano de Malaluan v. I. N. S.*, 577 F.2d 589, 595 n.5 (9th Cir. 1978). If her parents are deported, this American citizen child will be uprooted from her native country where she has spent her entire life, and taken to a land whose language and culture are foreign to her.

In *Ramos v. I.N.S.*, 695 F.2d 181, 187 n. 16 (5th Cir.1983) the Fifth Circuit noted the "great difference between the adjustment required" of infants going to a parent's homeland and school age children facing the same fate. In *Jara-Navarrete v. I.N.S.*, 813 F.2d 1340, 1342 (9th Cir.1986) the Ninth Circuit stated that U.S.

citizen children must be given individualized consideration. In *Ravancho v. I.N.S.*, 658 F.2d 169, 175-77 (3d Cir.1981) the court stated that consideration must be given to the effect of a move to the Philippines would have on an eight-year-old American citizen. In *In Re Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA held that to uproot the respondent's 15-year-old daughter at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship to her.

Based on the record, the AAO finds that the applicant's children would endure extreme hardship at this stage in their education and social development if they live in Mexico.

The record as presented establishes that the cumulative effect of economic, medical and educational issues rise to the level of extreme hardship if the applicant's spouse joined his wife in Mexico.

The record does not establish that the applicant's husband would endure extreme hardship if he remains in the United States without her.

Counsel asserts that Ms. [REDACTED] income is necessary to meet household expenses in the United States. The record, however, contains no documentation of the Iberra family's household expenses. In the absence of such evidence, the AAO cannot determine whether the Iberra family relies on the applicant's income to meet their basic living expenses. 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)).

Courts in the United States have 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, 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

Furthermore, the fact that an applicant has children born in the United States 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.

The record conveys that Mr. [REDACTED] is very concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shoostary, Perez, and Sullivan, 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.

The applicant established that her husband would experience extreme hardship if he joined her in Mexico. However, 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 in the event that [REDACTED] remained in the United States without his wife. 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 she 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, 8 U.S.C. § 1182(i), 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.