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Date:

JUN 26 2007

IN RE:

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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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. 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 admission into the United States by fraud or willful misrepresentation on March 2, 1988. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision, the district director states that on April 20, 2005 the applicant was sent a Request for Evidence (Form I-72) concerning the hardship his U.S. citizen spouse would suffer as a result of his inadmissibility. He was given 12 weeks to respond. The applicant did not respond to the notice and the district director then found that the applicant had not established extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated September 28, 2005.

On appeal, the applicant's spouse asks for the AAO to consider the applicant's appeal. She states that he has been in the United States since 1986, but left in February 1988 for an emergency. She states that when he attempted to return to the United States he was detained at the San Ysidro Port of Entry for using a false name. Finally, the applicant's spouse states that the applicant did not receive the Form I-72, that on June 4, 2002 the applicant sent the initial waiver application with the application fee of \$195.00. She submits a second waiver application with the application fee of \$265.00.

The record indicates that on March 2, 1988, at the San Ysidro Port of Entry, the applicant presented an Alien Registration Receipt Card (Form I-151) issued to a [REDACTED] to gain entry into the United States.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien himself experiences or his

children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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. 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

As noted above, the extreme hardship analysis has two parts. The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States.

The applicant has submitted statements from his spouse and daughter, a lawful permanent resident, to establish the hardship that would result if he were removed from the United States. The applicant's spouse states that she and her daughter are dependent on her husband's support and asks that her family not be

separated. *Spouse's Statement*, dated October 21, 2005. The applicant's daughter states that her father helps her with her school work and that without his help it would be hard for her. She also states that her son would be lonely without his grandfather. The applicant, his daughter asserts, would be without family if he is returned to Mexico as she and her son, and her mother are his only family. *Daughter's Statement*, dated October 21, 2005. While the AAO notes the claims made by the applicant's daughter, the hardships that she, the applicant's grandson or the applicant would experience as a result of removal will not, as previously noted, be considered in this proceeding since the record does not indicate that they would cause hardship for the applicant's spouse, the only qualifying relative. The applicant's spouse states that she is dependent on the applicant's support but no evidence is submitted to establish the financial hardship that would result from his removal. Accordingly, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if she were to remain in the United States following the applicant's removal.

The applicant has submitted no evidence to establish that his spouse would suffer extreme hardship if she relocated with him to Mexico. Without evidence of the impact that a move to Mexico would have on the applicant's spouse, the AAO cannot find that she would experience extreme hardship as a result of the applicant's inadmissibility.

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.

A review of the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.