



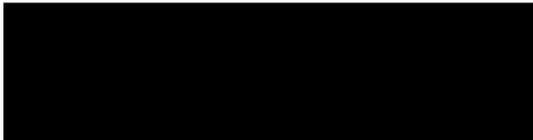
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MAR 16 2007



FILE:

Office: LOS ANGELES, CA

Date:

IN RE:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and 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 (U.S.) 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 making a false claim to U.S. citizenship on February 19, 1995. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that a bar to her admission to the United States as a lawful permanent resident would result in extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated October 27, 2004.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico because he would be separated from the rest of his family, he would lose his job as a firefighter, he would be separated from his son [REDACTED] from a previous relationship, and would have to take his two children with the applicant out of their school in the United States. Counsel also states that the applicant would suffer emotionally and financially if he were to stay in the United States and the applicant moved to Mexico with their two children. *Counsel's Brief*, dated November 24, 2004.

The record indicates that on February 19, 1995, the applicant made a false claim to U.S. citizenship in an attempt to gain entry into the United States at the San Ysidro Port of Entry.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. Because the applicant's false claim to U.S. citizenship occurred before September 30, 1996, the applicant is eligible for a waiver pursuant to section 212(i) of the Act.

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 herself experiences or her 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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 he resides in Mexico or in the event that he resides in the United States, as he 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. Counsel states, in his brief, that the applicant’s spouse was born and raised in the United States, his parents and sisters live in the United States, he does not speak Spanish and would not likely find productive employment in Mexico. *Counsel’s Brief*, dated November 24, 2004. The applicant’s spouse states that he has a child from a previous relationship named [REDACTED] that he would not be able to see if he relocated to Mexico. He states that he has a very close relationship with [REDACTED] and sees him frequently. *Spouse’s Declaration*, dated November 23, 2004. In the applicant’s declaration, she states that her spouse spends every other weekend with [REDACTED], treasures his time with him and believes it is extremely important for him to be involved in [REDACTED]’s life. *Applicant’s Declaration*, dated November 23, 2004.

The AAO notes that the record offers no evidence to support the applicant’s claim that her spouse would suffer extreme hardship upon relocation to Mexico. Although counsel asserts that the applicant’s spouse would be unable to find productive employment in Mexico and would no longer be able to meet his financial commitments, he provided no evidence that the applicant’s spouse would not be able to find work as a firefighter in Mexico or in another field of employment that would enable him to provide for his family and support his son in the United States. In addition, the applicant did not submit documentation to show that if her spouse moved to Mexico he would be unable to maintain a close relationship with his son [REDACTED]. Thus, the current record does not establish that the applicant’s spouse would suffer extreme hardship as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states, in his brief, that the applicant and her spouse have a very loving family and that they have been married for nine years. In her declaration, the applicant states that if she were to be removed from the United States she would take the children with her to Mexico and that this separation would emotionally destroy her spouse. Counsel states that if the applicant's spouse was separated from his family, he would have to support three households and that this burden would destroy him. *Counsel's Brief*, dated November 24, 2004. The applicant's spouse states that he is a firefighter in the Los Angeles area and that the applicant provides him with invaluable moral and emotional support. He states that this support is particularly important given the high level of stress he experiences as a firefighter. *Spouse's Declaration*, November 23, 2004. The AAO finds, however, that the record contains no documentation to show that the applicant's spouse would not be able to support his family living in Mexico or that his wife would not be able to find employment in Mexico to reduce the financial burden on him. No evidence has been submitted to show the effects the applicant's employment as a firefighter has on his emotional wellbeing and how the applicant is a part of his emotional support network. In addition, no evidence has been submitted that supports the applicant's claim that her spouse would be emotionally distraught if he were separated from his children. The applicant submitted no medical reports or psychological evaluation that indicates her spouse's emotional state or the effect that being separated from his family would have on him.

As previously noted, the applicant's spouse indicates that if she is removed from the United States, she would take her children with her to Mexico. Counsel asserts that the children would suffer by relocating to Mexico because they are not fluent in Spanish and it would disrupt their education. Counsel contends that the applicant's spouse does not want his children's education to be interrupted and it would devastate him to have his children's education interrupted. *Counsel's Brief*, dated November 24, 2004. The applicant states that education is extremely important to her and the applicant and it would destroy her spouse to have those opportunities taken away from them. It would be psychologically damaging to watch their children be ripped away from their teachers, classmates, friends and everything they know. The applicant states that this drastic change would cause their two children to suffer psychologically and academically, which, in turn, would cause the applicant and her spouse to suffer as well. *Applicant's Declaration*, dated November 23, 2004. The AAO finds that the applicant's spouse would be confronted with this hardship, whether he relocates to Mexico or he remains in the United States

Again, the claims made by the applicant and her spouse regarding the extent of the spouse's suffering if his children's lives are disrupted are not supported by the record. As previously discussed, the applicant has submitted no medical report or psychological evaluation to establish that her spouse's emotional reaction to his children's relocation to Mexico and that the disruption of their education would exceed that normally felt by parents in similar circumstances.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and his children. However, the current documentation in the record does not show that this hardship rises to the level of extreme hardship.

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 documentation in 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 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, 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.